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**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
CREEKSIDE OVERLOOK**

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

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

FOR

CREEKSIDE OVERLOOK

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

FOR

CREEKSIDE OVERLOOK

THIS DECLARATION is made on the date hereinafter set forth by **LAND DEV CREEKSIDE OVERLOOK, LLC**, a Georgia limited liability company (hereinafter sometimes called "Declarant");

WITNESSETH

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

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereof to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" attached hereto and by this reference incorporated herein 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 "Articles of Incorporation" means the Articles of Incorporation of Creekside Overlook Community Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.2 "Association" means Creekside Overlook Community Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

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

1.4 "Bylaws" means the Bylaws of Creekside Overlook Community Association, Inc., attached to this Declaration as Exhibit "D" and incorporated herein by this reference as may be amended from time to time.

1.5 "Common Property" means any and all real and personal property, and the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.6 "Community" 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.

1.7 "Declarant" means **Land Dev Creekside Overlook, 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 then 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.

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

1.9 "Mortgagee" means the holder of a Mortgage.

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

1.11 "Owner" means the record owner, whether one or more Persons, of the fee simple title to any Unit located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

1.12 "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.

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

1.14 "Total Association Vote" means the votes attributable to the entire membership of the Association (including votes of Declarant) as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast.

1.15 "Unit" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site, as shown on the subdivision plat(s) for the Community, recorded in the land records of Cherokee County, Georgia. If a dwelling on a Unit is attached by party wall(s) to one or more other dwellings, the boundary between Units shall be a line running along the center of the party wall(s) separating the Units. The ownership of each 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 Unit (including, but not limited to, compressors, conduits, wires and pipes) and any porch, deck, patio, steps, wall, roof, foundation, sunroom or any similar appurtenance as may be attached to a Unit when such Unit is initially constructed. The ownership of each Unit shall include, and there shall automatically pass with the title to each Unit as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interest of an Owner in the Common Property, as herein provided.

## 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 fifteen (15) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "B" attached hereto and by this reference incorporated herein, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected. Declarant intends to annex hereto the property contained in Declarant's land plan for the development as amended from time to time which property is a portion of the property described in Exhibit "B". However, inclusion of property on Declarant's land plan or in Exhibit "B" shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land plan bar Declarant from subjecting such property to the Declaration. Any annexation shall be effective upon the filing for record of a Supplementary Declaration unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not materially changed and as long as rights of existing Owners are not materially and adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein

any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

2.3 Other Annexation. With the exception of any property that may be unilaterally annexed by the Declarant in accordance with this Declaration, upon the written consent of: (a) the owner(s) thereof; (b) the Declarant; and (c) the Owners of at least two-thirds of the Units, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing a Supplementary Declaration describing the property being annexed for record in Cobb County, Georgia. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

2.4 Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing any portion of the Community then owned by Declarant or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community. Any such withdrawal shall be accomplished by the filing for record an amendment to this Declaration describing the property removed and shall be effective upon filing for record in the Office of the Clerk of Superior Court of Cobb County, Georgia unless a later effective date is provided therein. Such amendment shall be executed by the Declarant and the Owner(s) of the property being removed and shall not require the vote or consent of any other Person.

### Article 3

#### Association Membership and Voting Rights

3.1 Membership. Every Person who is the record owner of a fee or undivided fee interest in any Unit that is subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) 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 spouse of a member, but in no event shall more than one (1) Person representing a single membership hold office at the same time. 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. Members shall be entitled to one vote for each Unit owned. When more than one Person holds an ownership interest in a Unit, the vote for such Unit shall be exercised as those



Board of Directors may suspend the voting rights of an Owner for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations.

3.3 Notice of Sale or Acquisition. Owners must keep the Association apprised of their name, address and telephone number. Accordingly, prior to the sale of a Unit, the Owner shall provide the Association with written notice of the name of the purchaser and the date, time and place of the closing. Upon acquisition of a Unit, each new Owner shall provide the Association with written notice of the name, mailing address and telephone number of the Owner and the names of the Occupants of the Unit. All Owners shall notify the Association of any change in name, address or telephone number.

#### Article 4 Assessments

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

4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) special assessments; and (c) specific assessments. All such assessments, together with late charges, interest (at a rate of ten percent (10%) 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 shall be a continuing lien in favor of the Association on the Unit against which each assessment is made. 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, shall also be the personal obligation of the Person who was the Owner of the Unit at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Unit, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Unit. 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. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

4.3 General Assessments. It shall be the duty of the Board to prepare a 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 against each Unit for the year to be delivered to each member at least thirty (30) days prior to the due date of any general assessment. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and the Declarant. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue. General assessments shall be levied equally on all similarly situated 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 assessment shall be paid monthly. 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, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities (including all water supplied to the Community), cleaning and janitor services, Community trash collection as provided in this Declaration, landscape maintenance, 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.

4.4 Special Assessments. The Association may levy a special assessment if approved by a majority of the Total Association Vote and the Declarant. 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.

4.5 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. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. 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; and (b) expenses of the Association which benefit all Units, but which do not provide an equal benefit to all Units, may be assessed equitably among all Units according to the benefit received.

In the event the Community is served by a common water meter, the Board shall have the authority to install submeters and assess individual Unit utilities usage charges as specific assessments as provided above. This shall include the right to add a charge for the cost of overhead for such submetering, against individual Units and/or to install separate utility meters for the Units

4.6 Subordination of Liens to Mortgages. 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 the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the Unit pursuant to any proceeding in lieu of foreclosure or the sale of transfer of the Unit pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination and shall not relieve the Owner of the Unit 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 assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such Unit to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of such Unit of any personal obligation or relieve such Unit or the then Owner of such Unit from liability for any assessment authorized hereunder become due after such sale and transfer.

4.7 Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, 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; 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 the amount of the greater of Ten (\$10.00) Dollars or Ten percent (10%) of the amount due and interest shall be imposed at a rate of ten percent (10%) per annum on the principal amount due. 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 Cherokee County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments. 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 the Unit 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 (other than access to such Owner's Unit) and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association, including without limitation, suspension of utility services provided by the Association, until all assessments, costs and re-connection charges are paid in full. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such Unit in favor of the Association.

4.8 Date of Commencement of Assessments. Assessments shall commence when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a Unit on the date such Unit is occupied for residential purposes. The Declarant or any builder which the Declarant has designated in writing as an approved builder shall be exempt from the payment of assessments on any Unit on which the Declarant or the approved builder is the record title owner, provided, however, if any such Unit is occupied for residential purposes, assessments shall commence on the Unit.

4.9 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: (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the annual, special and specific assessments collected by the Association in any fiscal year (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 Community. No Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

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

4.11 Estoppel Letter. The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, as established by the Board, certify to the amount of any unpaid assessments constituting a lien on a specified Unit. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Unit shall be binding upon the Association.

4.12 Initiation Fee. Upon conveyance of title to a Unit to the first Owner, and upon each and every conveyance thereafter, an initiation fee in the amount of \$500.00, or such other amount agreed to by the Board of Directors by resolution so long as it does not exceed two times the annual assessment during the calendar year imposed, for the Unit shall be collected from the purchaser at the closing of such transaction and paid to the Association. Notwithstanding the foregoing, an initiation fee shall not be collected in the following situations: 1) conveyances to the Declarant or a builder approved by the Declarant; 2) conveyances to the spouse of the Owner; and 3) conveyances to an heir of the deceased Owner. The initiation fee shall constitute a specific assessment against the Unit, shall be in addition to, not in lieu of, the annual general assessment and shall not be considered an advance payment of such assessment. The initiation fee may be used by the Association for any purpose, 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.

4.13 Foreclosure Administration Fee. It is recognized that foreclosures of mortgages on Units create substantial administrative and other burdens on the Association. These additional burdens on the Association include, but are not limited to, having to monitor the status of mortgages and legal periodicals to determine when foreclosures occur, searching the Cherokee County, Georgia land records to determine the names of the purchasers at foreclosure sales, contacting the foreclosure purchasers/owners regarding foreclosure-purchaser responsibilities and assessment obligations and updating Association records multiple times to deal with just a single Unit. Pursuant to this Declaration, the Association is authorized to assess individual owners certain fees and expenses occasioned by and benefiting just those owners or those owners' Units. In accordance with these provisions, and in addition to annual assessments, special assessments, Initiation Fee, and other charges provided for in this Declaration, except as otherwise specifically set forth in this Declaration provided below, any Person who acquires a Unit at a foreclosure sale of the mortgage on such Unit, or by deed in lieu of a foreclosure, will be required to pay the Association a "**Foreclosure Administration Fee**" of \$500.00 at the time the foreclosure deed or deed in lieu of foreclosure is recorded in the Cherokee County, Georgia records. The Foreclosure Administration Fee shall constitute a specific assessment as described in this Declaration and shall be in addition to any outstanding assessments the Association is legally permitted to collect from the buyer at a foreclosure sale and/or the grantee/party receiving a deed in lieu of foreclosure.

#### Article 5

##### Maintenance: Common Property

5.1 Association's Maintenance Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and improvements situated on the Common Property. All maintenance performed by the Association pursuant to this Declaration, including, without limitation, as required under Sections 5.1 and 5.2 herein, shall be performed as determined in the sole discretion of the Board of Directors. The Association shall have the right but not the obligation to also maintain (whether or not constituting Common Property): (a) all entry features and entry area landscaping in the Community; (b) the exterior portions of all Units as provided in Section 5.4 hereof; (c) landscaping improvements located on the exterior portions of the Community, including parks, open space, medians and islands; (d) any irrigation system and the expenses for water and electricity, if any, provided to all entry features and Community landscaping; (e) Community street signs and street lights, including the expenses for electricity provided to all street lights; (f) all private Community parking areas, streets, roads, paths and; (g) storm water detention/retention ponds and storm water drainage facilities serving the Community, if and to the extent such facilities are not maintained by a governmental entity; (h) perimeter walls, retaining walls and fencing in the Community, if any; (i) all water and sanitary sewer pipes or facilities that serve more than one Unit if and to the extent the same are not maintained on an ongoing basis by a governmental entity; (j) recreational facilities serving the Community, if any; and (l) a termite bond covering the Units. In addition, the Association shall have the right, but not the obligation, to provide pest control to the exterior of the Units, and to maintain other property not owned by the Association, whether within or without the Community and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. 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 Owner as a specific assessment.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the prevailing standard of maintenance within the Community, as determined in the sole discretion of the Board of Directors.

Any common irrigation system installed by the Declarant or the Association shall be Common Property, operated, maintained, repaired and replaced by the Association. The deed of conveyance of any Unit shall not include any right, title or interest in such irrigation system, if any.

Any common sprinkler system serving Units installed by the Declarant or the Association Property shall be Common Property, operated, maintained, repaired and replaced by the Association. Any costs or expenses incurred for the maintenance, repair and/or replacement of sprinkler heads located inside a Unit may be specially assessed to the Unit and Unit Owner where the sprinkler head is located. Further, to the extent the need for maintenance, repair and/or replacement is due to an act or omission of any Unit Owner, his/her Occupants, guests or invitees, any and all costs and expenses incurred by the Association to perform the maintenance, repair or replacement may be specifically assessed back to the Unit and Unit Owner.

5.2 Owner's Maintenance Responsibility. Except for maintenance performed on a Unit by the Association pursuant to Sections 5.1 and 5.4 hereof, all maintenance of the Unit and all structures and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Unit in a manner consistent with this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; keeping improvements, and exterior lighting in good repair and working order; complying with all governmental health and police requirements; and repair of exterior damage to improvements. In addition, Owners shall maintain, repair and/or replace any pipe(s), wire(s) and conduit(s) which serve only the Unit, whether said pipe(s), wire(s) or conduit(s) are located within or outside of a Unit's boundaries. Accordingly, Owners shall maintain, repair or replace as necessary the water line serving the Unit up to the water sub-meter or meter serving that Unit. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten 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 time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or

replacement and all costs thereof shall be assessed against the Owner and the Unit as a specific assessment.

5.3 Party Walls. Each wall or fence whether built as part of the original construction of the Units or added pursuant to Article 6 hereof which shall serve and separate any two (2) adjoining Units shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall or fence may restore it, and the other Owner who is benefited by the wall or fence shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions. In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a Majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

5.4 Unit Maintenance. As provided in Section 5.1 above, the Association may assume maintain and keep in good repair the exterior portions of all Units of the Community. Maintenance by the Association of exterior portions of Units may, but is not required to, include the following: (a) exterior surfaces of garage doors; (b) all roofs, downspouts and gutters; (c) all exterior building surfaces with the exception of hardware and glass; provided, however, the Association shall not be responsible for waterproofing foundations either above or below grade; (d) driveways, walkways, steps, decks (whether enclosed or not) and deck surfaces, patios (whether enclosed or not) and patio surfaces; and (e) all landscaping within the Unit boundaries, including without limitation, landscaping within the patios, planters and courtyards, if any, of the Units. As provided in Section 4.5, the Association may have the right to assess costs and expenses incurred for the benefit of one or less than all Units to the benefited Owner(s). The Association shall not be responsible for maintaining, repairing and/or replacing the following: (i) HVAC or similar equipment located outside the Units; (ii) all doors, including screen and storm doors, hinges, frames and door frames and hardware which are part of the entry system; (iii) hose bibs contained in exterior walls of a Unit; (iv) lighting fixtures pertaining to a particular Unit and being located outside an entryway or in a garage; (v) window screens, window frames and glass; (vi) foundations and footings, including waterproofing (whether above or below grade); (vii) fences installed by an Owner and/or by the Declarant or its agents at the request of an Owner; and (viii) pipes which serve only one (1) Unit whether located within or outside of the Unit's boundaries. The Board of Directors may promulgate rules setting forth the extent of maintenance to be performed by the Association and may assume responsibility for providing additional maintenance as long as Units have equal rights to maintenance. 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.

5.5 Conveyance of Common Property by Declarant to Association; No Implied Rights. The 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 maintained by the Association for the benefit of its members. The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept on behalf of the Association any conveyance to the Association and to execute on behalf of the Association any and all documents, including, without limitation, deeds and transfer tax declaration forms, necessary or convenient to effectuate and document any such conveyance to the Association. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise. The 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 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 may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the real estate records of the county where the property is located. Declarant may, for so long as it has the right to appoint the Board of Directors, withdraw property from the Community or modify boundaries of any portion of the Community, as it determines in its sole discretion, including, without limitation, the withdrawal or changing of boundaries to previously conveyed Common Property to the Association. Notwithstanding the foregoing, changes to the boundary of a Lot require the consent of the Lot Owner and the Declarant.

5.6 Partition. After Declarant turnover, the Common Property shall remain undivided and no Owner, except for the Declarant, shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Units.

5.7 Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within 60 days after such taking, an alternative plan is approved by at least 75% of the Total Association Vote and the consent of 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.

5.8 Liability. Owners, Occupants and their guests shall use the Common Property and all portions of the Community not contained within a Unit at their own risk and shall assume sole



responsibility for their personal belongings used or stored thereon. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person while within the Community, without limitation on any portion of the Common Property, nor for loss or damage to personal belongings used or stored on the Common Property or any other portion of the Community. The Association shall not be liable for injury or damage to any Person or property (a) caused by the elements or by an Owner or any other Person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or Occupant for loss or damage, by theft or otherwise, of any property of such Owner or Occupant.

#### 5.9 Measures Related to Insurance Coverage.

(a) 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 Community 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 Community, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all Owners to turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes; requiring Owners to install smoke detectors; requiring Owners to make improvements to the Owner's Unit; and such other measures as the Board may reasonable require.

(b) 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 pursuant to Section 5.9(a) above, 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. 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 Section 5.9(a) above, 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.

### Article 6 Architectural Standards

6.1 General. No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling,

construction of impervious surface, building, exterior alteration of existing improvements, storm and screen doors, storm windows, fencing, change in the exterior color of any existing improvement and planting and removal of landscaping materials), shall be commenced or placed upon any part of the Community 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 structures on the Unit without approval hereunder. However, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Unit shall be subject to approval. This Article shall not apply to the activities of the Declarant, affiliates of the Declarant, nor to improvements to the Common Property 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 has the right to unilaterally annex additional property to the Community; and (b) each Unit has been improved with a dwelling for which a certificate of occupancy has been issued.

6.2 Guidelines and Procedures. Except as provided above, 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 improvement. The Declarant may adopt written architectural guidelines and application and review procedures, which may provide for a review fee. The Declarant shall have sole and full authority to prepare and to amend, from time to time at its sole discretion and without notice, the architectural guidelines. The Declarant shall make the architectural guidelines available to Owners who seek to engage in construction upon all or any portion of the Community and such Owners shall conduct their operations strictly in accordance therewith. If the Declarant fails to approve or to disapprove submitted plans and specifications within thirty (30) days after receipt of all required plans and specifications, such approval shall be deemed denied. The Declarant shall be the sole arbiter of such plans 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 any provision of this Declaration. Plans and specifications are not approved for engineering or structural design or quality of materials and by approving such plans and specifications the Declarant assumes no liability or responsibility therefor or for any defect in any structure constructed from such plans and specifications. Additionally, any modifications or improvements made by an Owner shall be maintained, repaired and/or replaced by the Owner or their successors-in-title at his/her sole expense.

6.3 Limitation of Liability. Plans and specifications are not approved for engineering or structural design or quality of materials and by approving such plans and specifications the Declarant assumes no liability or responsibility therefor or for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, nor the officers, directors, members, employees and agents of any of them 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 the officers, directors, members, employees and agents of any of them 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.

6.4 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 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 whatever subsequently or additionally submitted for approval or consent.

6.5 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 and would not be inconsistent with the overall scheme of development for the Community. No variance shall (a) be effective unless in writing, (b) be inconsistent with the overall scheme of development for the Community, 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.

6.6 Enforcement. Any structure or 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. In addition to, or in lieu of, the Association may elect to any other sanctions, including, without limitation, fines or suspension of rights, for non-compliance with this Article. All costs, including, without limitation, attorney's fees, may be assessed against the Unit as a specific assessment.

6.7 Architectural Review Committee. Until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Unit has been improved with a dwelling for which a certificate of occupancy has been issued, the Declarant shall have the sole right, power and authority under this Article. There shall be no surrender of this right except in a written instrument in recordable form executed by Declarant and recorded in the land records of the Clerk of the Superior Court of Cherokee County, Georgia. Upon expiration or earlier surrender in writing of all or a portion of such right and authority, the Board of Directors shall automatically constitute the Architectural Review Committee of the Association, and shall then have such jurisdiction over architectural control under this Article as may have been relinquished by the Declarant. The Declarant may, in its sole discretion and at any point, partially surrender its rights hereunder for existing improvements to the Board of Directors and may retain its rights, power and authority under this Article as it relates to new construction. After the termination of all rights of Declarant

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

Article 7  
Use Restrictions and Rules

7.1 Rules and Regulations. The Board of Directors may, from time to time, with the consent of Declarant and without a vote of the members, promulgate, modify or delete rules and regulations applicable to the Community. Such rules and regulations shall be distributed to all Owners 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 consent of Declarant.

7.2 Residential Use. Each Unit shall be used for residential purposes exclusively. Leasing of a Unit for residential occupancy shall not be considered a business or business activity. Excluding any activities conducted by the Declarant and its agents, no trade or business of any kind may be conducted in or from a Unit, except that the Owner or Occupant in residence at the Unit may conduct business activities within the house so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Unit; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (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 Community; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Community, 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. As provided in this Declaration, the Declarant and any Owner of a Unit that leases or otherwise provides use of his/her/its Unit to the Declarant shall be exempt from this provision.

7.3 Signs. No sign of any kind shall be erected within the Community without the prior written consent of the Declarant or, after the termination of the rights of Declarant hereunder, the Board of Directors. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. For-sale signs and security signs not larger than 18-inches by 18-inches and any signs required by legal proceedings may be erected upon any Unit. The provisions of this Section shall not apply to any Mortgagee in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure. The Board may impose a fine of One-Hundred and Fifty and No/100 Dollars (\$150.00) per day for display of any sign in

violation of this provision which is not removed within twenty-four hours after written demand is delivered to the Owner at that Unit. The Declarant or the Board of Directors may promulgate rules and regulations governing the placement, types and duration of posting of signs, and specifically allowing for temporary signs.

7.4 Vehicles; Parking. Regardless of local laws, vehicles shall be parked only in appropriate parking spaces serving the Unit or other designated areas, if any. No on-street parking, other than in connection with special events as approved by the Board of Directors, shall be permitted within the Community. All parking shall be subject to such rules and regulations as the Board may adopt. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking areas" shall refer to the number of garage parking spaces and the spaces located in the driveway of each Unit. All Units shall contain a garage; carports shall not be permitted. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five days if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle may be removed from the Community by the Board of Directors. Any towed vehicle, boat, personal watercraft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go-cart, golf cart, commercial truck, camper, bus or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage, for periods longer than 24 hours may be removed from the Community by the Board of Directors. Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. No eighteen wheel trucks or the cabs of such trucks or trucks with a load capacity in excess of three-quarters of a ton shall be parked, kept or stored within the Community except during the time reasonably necessary to provide service or delivery within the Community. No Owner or any member of the Owner's family residing with the Owner or tenants residing on the Unit shall park any vehicle in any Guest Parking Area.

If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity that will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing

activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

7.5 Leasing. Except as provided herein, the leasing of Units shall be prohibited.

(a) Definitions.

(i) "Authorized Corporate Occupant" means the Occupant designated by an Owner of a Unit who is a corporation, limited liability company, partnership or trust or other legal entity not being a natural person. If the record title Owner of a Unit is a corporation, limited liability company, partnership or trust or other legal entity not being a natural person, the Owner shall designate in writing to the Board the name(s) of the Authorized Corporate Occupant, who will occupy the Unit. The name of each Authorized Corporate Occupant shall be designated in writing to the Board and may not be changed more frequently than once every 12 months without the Board's written consent. A person's designation as an Authorized Corporate Occupant shall terminate automatically upon the termination of such person's relationship with the entity holding record title to the Unit. Occupancy of an entity-owned Unit by any person that does not qualify as an Authorized Corporate Occupant hereunder shall be unauthorized and shall be deemed to constitute leasing under this Section.

(ii) "Leasing" means the occupancy of a Unit by any person(s) other than:

(A) the Unit Owner or a parent, grandparent, spouse or former spouse of an Owner, which relationship shall be demonstrated to the Board on request by providing a copy of a birth certificate or similar document satisfactory to the Board;

(B) an Authorized Corporate Occupant; or

(C) a roommate of any of the above who also occupies the Unit as his or her primary residence.

A person occupying a Unit only may qualify to be an Authorized Corporate Occupant if no rent or consideration is paid or provided to the Unit Owner by or for the Occupant. Additionally, a Unit may be considered to be leased hereunder even if no rent is paid to the Owner if the Occupant does not constitute one of the Occupants exempted from leasing above.

(iii) "Leasing Cap" means the maximum total number of outstanding leasing permits but excluding hardship leasing permits that are permitted before additional leasing permits may be issued hereunder. The Leasing Cap shall be 10% of the Units.

(b) Authorized Leasing. Owners may lease their Units only if: (1) the Owner has received a leasing permit from the Board as provided below; (2) the Owner has received a hardship leasing permit from the Board as provided below; or (3) the Owner or Lessee is the Association. The leasing permit and hardship leasing permit are not intended as a way for the Association to approve or disapprove a particular tenant or Occupant, but a method to ensure that all leasing of Units is strictly

in compliance with the conditions and requirements specified in this Article. These conditions and requirements are of utmost importance in maintaining the high quality of the Community.

(c) Leasing Permits. If any other Owner requests a Leasing Permit and complies with the conditions and requirements of this Section, the Board of Directors shall issue a Leasing Permit to the Owner within 15 days of the Owner's request and compliance with the terms hereof, if no more than 10% of the Units have been issued Leasing Permits.

Owners who have been denied a Leasing Permit because the Leasing Cap is satisfied shall be placed on a waiting list to be issued such a permit, if they so desire, when the above conditions have been satisfied. The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the waiting list for a Leasing Permit.

The Board may refuse to issue any Leasing Permit or Hardship Leasing Permit if the Owner is shown on the Association's books and records to be delinquent in any assessment or charge or if the Owner is in violation of the Declaration, Bylaws or Association rules. Leasing Permits shall be valid only as to a specific Owner and Unit and shall not be transferable between either Owners or Units.

(d) Hardships Leasing Permits. If an Owner wishes to lease and does not satisfy the conditions and requirements for leasing under this Paragraph, and the inability to lease will result in an undue hardship to the Owner, then the Owner may apply to the Board for a Hardship Leasing Permit, for a term not to exceed one year or as otherwise approved by the Board. The Board has sole discretion whether to grant a Hardship Leasing Permit, and the existence of a hardship does not guaranty that an Owner is entitled to or will receive a Hardship Leasing Permit; such Permit is discretionary. The Board shall have the authority to issue or deny requests for hardship leasing permits in its discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship, (2) the number of hardship leasing permits which have been issued to other Owners, (3) the Owner's involvement in creating the hardship and ability to cure the hardship, and (4) whether previous hardship leasing permits have been issued to the Owner.

(e) Expiration and Revocation of Permits. Leasing Permits and Hardship Leasing Permits are automatically revoked upon the sale or transfer of the Unit to a third party (excluding sales or transfers to an Owner's spouse or former spouse). Leasing Permits also expire if the Unit is not leased as provided herein within 120 days of the issuance of the Leasing Permit. The Board also may revoke any Leasing Permit or Hardship Leasing Permit if the Owner is shown on the Association's books and records to be past due in any assessment or charge or if the Owner and/or the Unit Occupant or any guest of the Owner or Occupant violates the Declaration, Bylaws, Association rules or any applicable laws or ordinances.

(f) General. Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board shall maintain in its files and, upon request, shall provide to any Owner a form that is deemed acceptable. There shall be no subleasing of Units or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than six (6) months, except with written Board approval. Within seven (7) days after

executing a lease agreement for the lease of a Unit, the Unit Owner shall provide the Board of Directors with: (1) a copy of the proposed lease; (2) the names, phone numbers, email addresses, work locations and work phone numbers of all of the proposed occupants of the Unit; (3) the Owner's address, and the Owner's phone number, email address, work location, work phone number and physical street address to be occupied by the Owner when the Unit is leased; and (4) such other information or lease administration fees as may be required by the Board. The Unit Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations.

(g) Compliance With Declaration, Bylaws, and Rules and Regulations, Use of Common Property, and Liability for Assessments. Any lease of a Unit shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner and each lessee, by occupancy of a Unit, covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Unit:

(i) Compliance with Declaration, Bylaws, and Rules and Regulations. The Owner and lessee shall comply with all provisions of the Declaration, Bylaws and Association rules and shall control the conduct of all other occupants and guests of the leased Unit in order to ensure such compliance. The Owner shall cause all occupants of his or her Unit to comply with the Declaration, Bylaws and Association rules, and shall be responsible for all violations by such occupants, notwithstanding the fact that such Occupants are fully liable and may be sanctioned for any such violation.

If a Unit is leased or occupied in violation of this Paragraph or if the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, the Association's Board of Directors shall be authorized, in addition to all other available remedies, to levy fines against the lessee and/or the Owner, to suspend all voting and/or Common Property use privileges of the Owner, Occupants and unauthorized tenant(s) and to suspend all common services to the Unit paid for by the Association as a common expense, including water service to the Unit, subject to the provisions of this Declaration and the Bylaws.

If a Unit is leased or occupied in violation of this Paragraph, the Association may require the Owner to evict the tenant. If the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, such violation is deemed to be a default under the terms of the lease and shall authorize the Owner or the Association, as more fully described herein, to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. Alternatively, the Association may require the Owner to evict the violating tenant. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Unit.



(ii) Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities.

(iii) Liability for Assessments. When a Unit Owner who is leasing his or her Unit fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under Article 4 herein as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(h) Applicability of this Section. This Section shall not apply to any leasing transaction entered into by 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. Furthermore, for so long as Declarant is the Owner of any Unit, the provisions of this Section shall not apply to Declarant or the leasing of a Unit by Declarant. Declarant or an shall be permitted to lease a Unit without being required to procure a Leasing Permit.

7.6 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Unit, with the exception of dogs, cats or other usual and common household pets in reasonable number as determined by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs shall at all times when outside the Unit be kept on a leash or otherwise under control. All pets shall be registered, licensed and inoculated if and as required by law. Animal control authorities shall be permitted to enter the Community to patrol and remove unlicensed pets. An Owner shall not allow any animal waste to remain on the Common Property, Community open space, or any landscaped area maintained by the Association.

7.7 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Unit. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition; nor shall any substance, thing or material be kept that will emit foul 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 activity that the Board of Directors determines to be noxious or offensive shall be carried on within the Community. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may in the reasonable opinion of the Board of Directors diminish or destroy the enjoyment of the Community by other Owners and Occupants.

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

7.9 Antennae. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the Community, 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, that are one meter or less in diameter; (b) antennas designed to receive video programming services via multi-point distribution services 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 portion of the Unit which is least visible from public view unless an acceptable quality signal cannot otherwise be obtained.

7.10 Guns. The use of firearms in the Community shall be in accordance with all federal, state and local laws governing the use of firearms.

7.11 Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any part of the Community by an Owner without ARC permission, which may be granted only in the sole discretion of the ARC. The Declarant and the Association may erect any type of fence on the Common Property or elsewhere within the Community as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for health and safety of Owners and Occupants. The Declarant or the Board may adopt specific guidelines governing the placement and style of fences.

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

7.13 Lighting. Exterior lighting on any Unit shall not be permitted, except for: (a) approved lighting as originally installed on a Unit; (b) seasonal decorative lights; or (c) other lighting approved under and pursuant to Article 6 hereof.

7.14 Artificial Vegetation, Play Equipment, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. No hammock, statuary, play equipment (including, without limitation, basketball goals), exterior sculpture or fountains may be erected on any Unit, without the prior written approval in accordance with the provisions of Article 6 hereof and/or compliance with written guidelines established under Article 6 hereof, as applicable.

7.15 Flags. No flags may be displayed on any Unit without prior written approval in accordance with the provisions of the Architectural Standards hereof; provided, however no such approval shall be required to display the flag of the United States of America and the current flag of the State of Georgia on a Unit in accordance with the provisions of the U.S. Flag Code (36 US Code 10) and usual and customary practice. The Board of Directors of the Association may promulgate

reasonable rules and regulations with respect to the display of flags in the Community, including, without limitation, regulating the size of flags that may be displayed.

7.16 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless approved in accordance with the provisions of the Architectural Standards hereof.

7.17 Clotheslines. No exterior clotheslines of any type shall be permitted upon any Unit.

7.18 Yards. Owners shall not add trees, shrubs, bushes, plants or other vegetation to the exterior portions of the Community maintained by the Association without the prior written consent of the Board of Directors.

7.19 Window Treatments. All Unit windows shall have window treatments and any portion thereof visible from outside the Unit shall be white or off-white in color, unless otherwise approved in accordance with Article 6 hereof. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose.

7.20 Storm and Screen Doors and Windows. Owners shall not add storm and screen doors and storm windows on any Unit without prior approval in accordance with the provisions of Article 6 hereof.

7.21 Drainage. Catch basins, retention ponds, detention ponds, drainage easement areas and related drainage facilities are for the purpose of controlling the natural flow of water only. No obstructions or debris shall be placed in these areas unless installed by the Declarant. No Owner may obstruct or alter the drainage flows after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article 6 hereof.

7.22 Garbage Cans, Firewood, Etc. All garbage cans, firewood and other similar items shall be stored within the garage of the Unit. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. The Association may contract with a private trash collection company to pick up all usual and customary household trash on a regular basis or, in the alternative, the Association may designate a trash provider that all Owners and Occupants must use for trash service. Trash and recycling receptacles shall be placed at the curb no earlier than 5:00 p.m. the day before pick up and shall be removed within twenty-four (24) hours. Trash pick-up shall also be subject to such reasonable rules and regulations as the Board of Directors may adopt.

7.23 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) with the consent of the Owner of the effected Unit(s) and to approve the revision and re-recording of any plat of any Unit(s) owned by any builder or developer, including, but not limited to, changing any Unit to Common Property or creating a public or private street over any Unit

or property that was formerly a Unit, without the consent of any Person, other than the Owner(s) of such Unit(s).

7.24 Heating of Units in Colder Months. In order to prevent breakage of water pipes 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 (50°) degrees Fahrenheit during the months of October, November, December, January, February, March, and April. Owners shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working, the Owner shall immediately inform the Owners of the other Units of this failure of the equipment and of the time needed in order to repair the equipment and shall take reasonable steps to keep the Unit heated sufficiently to prevent the breakage of water pipes.

7.25 Garage Sales. No garage sale, carport sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Community without the prior written consent of the Board of Directors. If so permitted, any such activities shall be subject to all reasonable conditions that the Board may impose.

7.26 Creek Buffer. Portions of the Community, as shown on the recorded subdivision plat(s) for the Community, may contain a creek or stream buffer. Land disturbing activities shall not be conducted within any creek or stream buffer area, except with prior written approval under Article 6 hereof and in compliance with Georgia law, including, without limitation, the Control of Erosion and Sedimentation Act, O.C.G.A. Section 12-7-1 et seq., as amended from time to time.

7.27 Wetlands, Ponds, Creeks and Streams. Except as provided herein, all wetlands, streams, creeks and storm water retention or detention ponds within the Community shall be used for aesthetic amenities and storm water drainage only, no other use thereof, including, without limitation, swimming, ice skating, playing or use of personal flotation devices, and other recreation, shall be permitted without the written consent of the Board of Directors. The Association and/or Declarant shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of creeks, ponds, or streams within the Community. For this purpose, "wetlands" means any area labeled as wetlands on a recorded plat for the Community or otherwise designated as wetlands by the Declarant or the Board of Directors. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any storm water retention or detention ponds, creek or stream within the Community, or any other Common Property. Applicable governmental agencies, the Declarant and the Association, shall have the sole right to control the water level of all other bodies of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any storm water retention or detention ponds, wetlands, streams or creeks within the Community. Owners shall have no riparian or littoral rights with respect to the waters in any creek or stream within the Community and shall not be permitted to withdraw any water from any creek or stream as may exist in the Community without the prior written consent of the Board of Directors.

Article 8  
Insurance and Casualty Losses

8.1 Insurance. The Board of Directors shall have the authority to obtain insurance for all insurable improvements located on the Common Property or required to be maintained by the Association under Article 5 hereof and blanket insurance for all Units; provided however, any Association insurance obtained as provided herein shall not include the Unit Owner's personal property and/or betterments and improvements made by Unit Owners (which shall be the sole responsibility of the Unit Owner). This insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief and shall be in the amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all risk" coverage in like amounts.

The Board of Directors shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars. Policies may contain a reasonable deductible as determined by the Board of Directors.

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

In addition to other insurance coverage required by this Section, the Board shall obtain workers compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law, and, if available at reasonable cost, as determined in the sole discretion of the Board, a fidelity bond or employee dishonesty coverage covering directors, officers, employees and other Persons handling or responsible for the Association's funds. The amount of fidelity or employees dishonesty coverage, if obtained, shall be determined in the director's best business judgment. Such coverage, if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least ten (10) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

8.2 Damage and Destruction.

(a) In General. Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors 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, and the Owners of any damaged Units 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 Units who would be responsible for such loss in the absence of insurance or otherwise to the Owners of all Units. 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 shall be deposited to the benefit of the Association. In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

8.3 Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one 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 provided that the deductible will apply to each Unit separately. If any Owner fails to pay the deductible when required hereunder, the Association can pay the deductible and assess the cost to any such Owner pursuant to Article 4 of this Declaration; provided, however, no Owner shall be assessed more than Five Thousand Dollars (\$5,000.00) as the cost of the deductible for any one occurrence.

## Article 9

### Mortgagee Provisions

9.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number, therefore becoming an "eligible holder"), will be entitled to timely written notice of: (a) any condemnation loss or any casualty loss which affects a

material portion of the Community or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Unit of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

9.2 Audit. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements of the Association within 90 days of the date of the request.

9.3 No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

#### Article 10 Easements

10.1 General. Each Unit shall be subject to those easements, if any, shown or set forth on the recorded subdivision plat for the Community, 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 Superior Court of Cherokee County, Georgia.

10.2 Easements for Use and Enjoyment. Every Owner shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the Occupants of the Owners 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 suspend the right of an Owner to use the Community recreational facilities, if any, for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations;

(b) the right of the Association to charge reasonable admission and other fees for the use of Community recreational facilities to non-members, if any, to limit the number of Persons who may use the Community recreational facilities, if any, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by authorized users and their guests and invitees;

(c) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least two-thirds of the Units (other than Declarant) and the consent of 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 in the Community (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 in the Community.);

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

(e) the right of the Association to dedicate or transfer all or any portion of the Common Property upon the approval of the Owners of at least two-thirds of the Units (other than Declarant) and the Declarant; provided, however, the Declarant may unilaterally, or if the Declarant is no longer authorized to appoint the Board of Directors the Association with the express consent of the Declarant, may convey all or any portion of the Common Property as provided in the Declaration without a vote of the members;

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

(g) all encumbrances and other matters shown by the public records affecting title to the Common Property, including, without limitation, those easement and usage rights reserved or granted to the adjacent property.

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

10.4 Easements for Driveway Encroachment. There is hereby reserved appurtenant easements for encroachment as between each Unit and such portion or portions of the driveway serving an adjacent Unit due to the placement or settling or shifting of the driveway constructed, reconstructed, or altered thereon (as approved under the Architectural Standards of the Declaration) to a distance of not more than two (2) feet, as measured from any point on the common boundary between adjacent Units along a line perpendicular to such boundary at such point; provided, however, in no event shall



an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner or Occupant after the initial construction of improvements by Declarant.

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

10.6 Easement for Utilities- Unit Owner. Declarant hereby establishes for the benefit of each Unit a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving such Unit and situated in, on or under any other Unit or the Common Property. The Board of Directors, and without a vote of the Owners, shall have the right, power and authority to grant permits, licenses, utility easements, and other easements, permits or licenses necessary or desirable for the proper maintenance or operation of the Community under, through, or over the Units and/or the Common Property as may be reasonably necessary to or desirable for the ongoing operation of the Community. In the event that any Owner desires access to another Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owner of such other Unit(s) at least two (2) days in advance of the date that access is needed and attempt to agree on a convenient date and time for access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a Unit to which access is needed under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Units, reasonable steps shall be taken to protect such Units and the property of the Owners and Occupants thereof, and damage shall be repaired by the Person causing the damage at its sole expense.

10.7 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, the Bylaws, and rules, 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 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 living space of any Unit without permission of the Owner.

10.8 Easement for Association Maintenance. Declarant hereby grants to the Association a perpetual easement across 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 contractors at their sole expense. Except in an emergency situation, entry to the interior of a Unit shall only be during reasonable hours and after notice to the Owner.

10.9 Easement for Unit Maintenance. Declarant hereby reserves for the benefit of each Unit reciprocal appurtenant easements between adjacent Units for the purpose of maintaining or repairing the improvements located on each Unit which easement shall extend to a distance of five (5) feet as measured from any point on the common boundary between the Units. The easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the Unit over which this easement is exercised which arises out of such maintenance or repair work.

10.10 Easement for Drainage. There is hereby reserved to the Declarant and granted to the Association a blanket easement for creating and maintaining satisfactory drainage across the Community; provided however such easement area shall not include any portion of a Unit upon which the foundation of a dwelling is located. 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. Neither the Declarant, the Association or any Owner constructing according to plans and specifications approved under the Architectural Standards hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction on a Unit.

10.11 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 an easement across the Community for Declarant to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's development, construction and sales activities, including, but not limited to: the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Unit; the right to tie into any portion of the Community with streets, driveways, paths, parking areas and walkways; 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 Community; the right to grant easements over, under, in or on the Community, 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 Community; the right to convert Units (with the consent of the Owner thereof) to Common Property; the right to construct utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Community; and the right to construct and

operate business offices, signs, construction trailers, model residences and sales offices. Declarant may use Units, offices or other buildings owned or leased by Declarant as model homes. This Section shall not be amended without the Declarant's written consent until the Declarant's rights hereunder have terminated as herein provided.

Article 11  
General Provisions

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

11.2 Duration. The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community 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 Georgia 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 two years 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.

11.3 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.

11.4 Self-Help. In addition to any other remedies provided for herein, the Association, the Declarant, the Architectural Review Committee or their respective duly authorized agents shall have the power to enter upon any Unit or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Owner shall be given ten days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required 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.

11.5 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 no longer owns any property in the Community and no longer has the right to unilaterally annex additional property to the Community as provided herein and a certificate of occupancy has been issued for a dwelling on each Unit in the Community; or (b) the date of recording by Declarant in the real estate records of Cherokee County, Georgia of a written instrument terminating all of Declarant's rights hereunder.

11.6 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Units subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company, including without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Units subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner of such Unit consents thereto in writing. Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder nor shall it adversely affect title to any Unit without the consent of the affected Owner. The Board of Directors, with the written consent of the Declarant if the Declarant shall own any Unit(s) or have any right(s) to annex additional property hereto, and without a vote of the members may amend this Declaration for the sole purpose of electing to be governed by and thereafter complying with the provisions of the Georgia Property Owner's Association Act, O.C.G.A. § 44-3-220 *et seq.* In addition to the above, this Declaration may be amended upon the affirmative vote or written consent of Owners of at least two-thirds of the Units and the consent of Declarant if the Declarant shall own any Unit(s) or have any right(s) to annex additional property hereto. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the

alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given.

11.7 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.

11.8 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.

11.9 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.

11.10 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.

11.11 Preparer. This Declaration was prepared by G. Lanier Coulter, Jr., Coulter & Sierra, LLC, 2800 Century Parkway, Suite 275, Atlanta, Georgia 30345.

11.12 Notices. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Unit and to the Declarant or the Association at the address of their respective registered agent on file with the Secretary of State of Georgia. Any Owner may designate a different 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 numbers 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 private courier service. The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or the date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

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

11.14 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.

11.15 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.

11.16 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 Community or the privilege of possession and enjoyment of any part of the Community.

11.17 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 Community.

11.18 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least 75% of the Total Association Vote and the consent Declarant. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (b) the imposition and collection of assessments as provided herein, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. 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.

101.19 Security and Safety. THE DECLARANT OR THE ASSOCIATION MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SAFETY FOR THE COMMUNITY; HOWEVER, EACH OWNER, ON BEHALF OF SUCH OWNER, ITS OCCUPANTS AND THEIR RESPECTIVE GUESTS, LICENSEES AND INVITEES, ACKNOWLEDGES AND AGREES THAT NEITHER THE DECLARANT, THE ASSOCIATION, NOR THE OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES OF EITHER ARE A PROVIDER OF SECURITY AND NONE OF THEM SHALL HAVE A DUTY TO PROVIDE SECURITY IN AND TO THE COMMUNITY. FURTHERMORE, NEITHER DECLARANT NOR THE ASSOCIATION GUARANTEES OR REPRESENTS THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE PROPERTY AND COMMIT CRIMINAL ACTS ON THE PROPERTY NOR DOES THE DECLARANT OR ASSOCIATION GUARANTEE OR REPRESENT THAT CRIMINAL ACTS AT THE COMMUNITY OR WITHIN UNITS WILL NOT BE COMMITTED BY OTHER OWNERS, OCCUPANTS OR THEIR RESPECTIVE GUESTS, LICENSEES AND INVITEES. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER, OCCUPANT AND THEIR RESPECTIVE GUESTS, LICENSEES AND INVITEES TO PROTECT HIS OR HER PERSONS AND PROPERTY AND ALL RESPONSIBILITY TO PROVIDE SECURITY SHALL LIE SOLELY WITH EACH OWNER, OCCUPANT AND THEIR RESPECTIVE GUESTS, LICENSEES AND INVITEES. NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SAFETY MEASURES UNDERTAKEN.

EACH OWNER, ITS OCCUPANTS AND THEIR RESPECTIVE GUESTS, LICENSEES AND INVITEES SHALL USE THE COMMON PROPERTY, INCLUDING THE ANY AREAS THEY HAVE EXCLUSIVE USE OF, AND ALL OTHER PORTIONS OF THE COMMUNITY NOT CONTAINED WITHIN A UNIT AT THEIR OWN RISK AND SHALL ASSUME SOLE RESPONSIBILITY FOR THEIR PERSONAL BELONGINGS USED OR STORED THEREON. ALL OWNERS AND OCCUPANTS AND THEIR RESPECTIVE GUESTS, LICENSEES AND INVITEES SHALL HAVE AN AFFIRMATIVE DUTY AND RESPONSIBILITY TO INSPECT THE COMMON PROPERTY AND ALL PORTIONS OF THE COMMUNITY NOT CONTAINED WITHIN A UNIT FOR ANY DEFECTS, PERILS OR OTHER UNSAFE CONDITIONS RELATING TO THE USE AND ENJOYMENT THEREOF. THE ASSOCIATION, DECLARANT, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND AGENTS SHALL NOT BE HELD LIABLE FOR PERSONAL INJURY TO ANY PERSON OCCURRING ON THE COMMON PROPERTY, NOR FOR LOSS OR DAMAGE TO PERSONAL BELONGINGS USED OR STORED THEREON OR ON ANY OTHER PORTION OF THE COMMUNITY. NOR SHALL THE ASSOCIATION, DECLARANT, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND AGENTS BE LIABLE TO ANY OWNER OR OCCUPANT OR THEIR RESPECTIVE GUESTS, LICENSEES AND INVITEES FOR LOSS OR DAMAGE, BY

THEFT OR OTHERWISE, OF ANY PROPERTY OF SUCH OWNER, OCCUPANT, GUEST,  
LICENSEE OR INVITEE.

[SIGNATURES BEGIN ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the Declarant herein hereby executes this instrument under seal, this 7<sup>th</sup> day of February, 2018.

DECLARANT: **LAND DEV CREEKSIDE OVERLOOK, LLC, a Georgia limited liability company**

By: *Robert C. White*

Print Name: Robert C. White

Its: President

Signed, sealed, and delivered in the presence of:

*[Signature]*  
WITNESS

*Joi Wilson*  
NOTARY PUBLIC

My Commission Expires:

[AFFIX NOTARY SEAL]

Joi Wilson, Notary Public  
State of Georgia  
County of Clarke  
My Commission Expires  
September 3, 2019

**EXHIBIT "A"**

## Legal Description

All that tract or parcel of land lying and being in Land Lots 28 and 29, 18<sup>th</sup> District, 2<sup>nd</sup> Section, Cobb County, Georgia commonly known as 5810 Maxham Road, Austell, Georgia 30168, and being more particularly described as follows:

**BEGINNING** at an iron pin on the westerly right-of-way line of Maxham Road (75 foot right-of-way) 270.18 feet in a northerly direction along said right-of-way line from the intersection of the westerly right-of-way line of Maxham Road and the northern line of Land Lot 83, 18<sup>th</sup> District, 2<sup>nd</sup> Section, Cobb County, Georgia; thence leaving said right-of-way line and running North 89 degrees 39 minutes 53 seconds West 1,334.87 feet to an iron pin on the east bank of Sweetwater Creek; thence running along the east bank of Sweetwater Creek the following courses and distances: North 21 degrees 45 minutes 29 seconds East 70.24 feet to a point; North 19 degrees 35 minutes 04 seconds East 84.96 feet to a point; North 23 degrees 24 minutes 54 seconds East 64.28 feet to a point; North 22 degrees 39 minutes 30 seconds East 83.52 feet to a half-inch angle iron found; thence leaving the east bank of Sweetwater Creek and running South 89 degrees 29 minutes 46 seconds East 1,283.13 feet to an iron pin on the westerly right-of-way line of Maxham Road; thence running along said right-of-way line South 12 degrees 16 minutes 34 seconds West 284.37 feet to an iron pin and the **POINT OF BEGINNING**; as more particularly shown on a survey for Cash Real Estate Fund - 4, Ltd. prepared by Crusselle, Rakastrow and Associates, dated September 22, 1988, and bearing the seal of George Willis Crusselle, Georgia Registered Land Surveyor # 1373.

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

Any property within a 5 mile radius of the property located on Exhibit A hereto

EXHIBIT "C"

BYLAWS

OF

CREEKSIDE OVERLOOK COMMUNITY ASSOCIATION, INC.

Prepared By:  
G. Lanier Coulter, Jr.  
Coulter & Sierra, LLC  
2800 Century Parkway, Suite 275  
Atlanta, Georgia 30345  
(404) 554-2071

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BYLAWS  
OF  
CREEKSIDE OVERLOOK COMMUNITY ASSOCIATION, INC.  
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BYLAWS

OF

CREEKSIDE OVERLOOK COMMUNITY ASSOCIATION, INC.

Article 1

Name, Membership, Applicability and Definitions

1.1 Name. The name of the corporation shall be Creekside Overlook 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 Declaration of Protective Covenants, Conditions, Restrictions and Easements for Creekside Overlook (such Declaration, as amended, 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.

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 Community 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 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 to mail or to cause to be delivered to the Unit of each member (as shown in the records of the Association as of the record date) a 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 Georgia Nonprofit Corporation Code (O.C.G.A. Section 14-3-101, *et seq.*) or other applicable law (the "Governing Law"), the purpose(s) thereof. 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 before the 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, 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 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 at the Association's principal office or at such other reasonable place as may be specified in the notice. 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, dated, and filed with the Secretary before the appointed time of each meeting. 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 of written revocation signed by the member; (c) receipt by the Secretary 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 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 25% of the votes entitled to be cast at the meeting shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

2.12 Action Without A Formal Meeting. Any action required or permitted to be approved by the members may be approved without a meeting if one 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. If less than unanimous consent is obtained, the approval shall be effective ten days after the Secretary gives written notice of the approval to all members who did not sign a consent. Each signed consent shall be included in the minutes of meetings of members filed in the permanent records of the Association.

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 written 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 18 years of age or older. Except for directors appointed by the Declarant, each director must reside in the Community 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 expiration of fifteen (15) years after the date of the recording of the Declaration; (b) the date on which all of the Units planned by Declarant to be a part of the Community shall have been improved with a dwelling and conveyed to an Owner for occupancy as a residence; or (c) 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 Community. The total number of Units planned by Declarant for the Community shall initially be the number of Units shown on the Declarant's land use plan for the development as it may be amended from time to time. Inclusion of property on the land use plan shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land use plan bar Declarant from subjecting such property to the Declaration. The final total number of Units planned for the Community shall be the actual number of Units shown on the recorded subdivision plats for the Community regardless of any different number of Units shown from time to time on the land use plan. The Declarant shall notify the Association when the final subdivision plat for the Community has been recorded.

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 from one to three members as determined by Declarant in writing from time to time. Thereafter, the Board shall consist of three members, who shall be elected as provided below.

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

3.5 Election and Term of Office. After the Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting (or take action under Section 2.12 or Section 2.13 in lieu of a meeting) and the members shall elect three directors. The members of the Board of Directors shall hold office for one year and shall continue in office until their respective successors shall have been elected and take office. At annual meetings of the membership thereafter (or pursuant to Section 2.12 or Section 2.13 in lieu of a meeting), directors shall be elected. The three candidates receiving the most votes shall be elected.

3.6 Removal of Directors. At any annual, regular or special meeting of the Association, any one or more of the members of the Board of Directors elected by the members may be removed, with or without cause, by a majority of the Total Association Vote and a successor may then and there be elected to fill the vacancy thus created. The notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is removal of a director. A director whose removal by the members has been proposed shall be given an opportunity to be heard at the meeting. Additionally, any director who has three consecutive unexcused absences from Board meetings or who is delinquent in

the payment of an assessment for more than 30 days may be removed by a majority vote of the remaining directors.

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

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

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

3.10 Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two 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; or (c) by telephone communication (including facsimile), either directly to the director or to the director's home or office. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited with the U.S. Postal Service at least four days before the time set for the meeting. Notices given by personal delivery or telephone shall be given at least two days before the day set for the meeting.

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

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

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

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

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

3.16 Action Without A Formal Meeting. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing, 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.

3.17 Telephonic Participation. One or more directors may participate in and vote during any meeting of the Board by telephone conference call or any other means of communication by which all directors participating may simultaneously hear each other during the meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

3.18 Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by law, the Declaration, Articles, 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) preparation and adoption of 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 of bank accounts on behalf of the Association and designating the signatories required;

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

(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) authorization of contracts on behalf of the Association.

3.19 Management Agent. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager. The term of any management agreement shall not exceed one year and shall be subject to termination by either party, without cause and without penalty, upon thirty (30) days' written notice.

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

3.21 Fining or Suspension Procedure. The Board shall not impose a fine or suspension (a late charge shall not constitute a fine) unless and until the procedure outlined herein has been followed. However, this shall not be required for the following: (1) late charges on delinquent assessments; (2) suspension of voting rights if an Owner is shown on the Association's records to be more than 30 days delinquent in any payment due the Association; (3) suspension of the right to use the Common Property; and (4) suspension of utility services, in which case the late charge and foregoing suspensions shall be automatic.

(a) Written notice shall be delivered to the member by personal delivery at the Unit or first-class or certified mail sent to the address of the member shown on the Association's records, specifying:

- (1) the nature of the violation, the fine or suspension 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 or suspension will take effect;
- (2) that the violator may, within ten days from the date of the notice, request a hearing before the Board regarding the fine or suspension imposed;
- (3) the name, address and telephone numbers of a person to contact to request a hearing;
- (4) that any statements, evidence, and witnesses may be produced at the hearing; and
- (5) that all rights to have the fine or suspension reconsidered are waived if a hearing is not requested within ten days of the date of the notice.

(b) If a hearing is requested, 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. Except for the display of unapproved signs, the fine or suspension shall run from the date that a decision is made by the Board at the conclusion of the hearing or such later date as the Board may determine.

#### Article 4 Officers

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

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 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 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 committee shall not be authorized to exercise any authority of the Board under the Articles of Incorporation, the Declaration, these Bylaws or the Georgia Nonprofit Corporation Code.

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, the Declaration or these Bylaws.

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

6.4 Notices. Unless otherwise prohibited by these Bylaws or the Declaration, all notices and other communications required by the Declaration or Bylaws shall be in writing and shall be given by:

- (a) Personal delivery;
- (b) United States mail, first class, postage prepaid;
- (c) Statutory overnight delivery;
- (d) Electronic mail;
- (e) Facsimile; or
- (f) A secure web site, provided that notice shall be deemed given via web site only upon proof that the addressee has retrieved the message.

Notices given by one of the methods described above shall be given:

(a) If to the Unit Owner, to the address, electronic mail address or facsimile number that the Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Unit of such Owner; or

(b) If to an Occupant, to the address, electronic mail address or facsimile number that the Occupant has designated in writing with the Secretary or, if no such address has been designated, at the address of the Unit occupied.

6.5 Amendment. These Bylaws may be amended by the Board of Directors with the consent of the Declarant if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) enable any title insurance company to issue title insurance coverage with respect to the Units subject to the Declaration; (c) enable an institutional or governmental lender or



purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase Mortgage loans on the Units subject to the Declaration; (d) enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Units subject to the Declaration; or (e) comply with the provisions of the Georgia Property Owners Association Act, O.C.G.A. § 44-3-220 *et seq.* In addition, these Bylaws may be amended upon the affirmative vote of at least two-thirds (2/3) of the Total Association Vote and the consent of Declarant.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Creekside Overlook Community Association, Inc., a Georgia corporation;

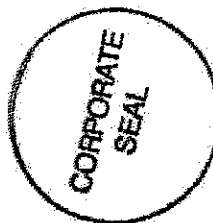
That the foregoing constitute the Bylaws of said Association, as duly adopted by the Board of Directors and the members of the Association on the 7<sup>th</sup> day of Feb, 2018.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 7<sup>th</sup> day of February, 2018.

CREEKSIDE OVERLOOK COMMUNITY  
ASSOCIATION, INC.

  
Secretary

[CORPORATE SEAL]



**SEAL**