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

**FOR**

**KENSINGTON GATES TOWNHOMES**

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS****FOR****KENSINGTON GATES TOWNHOMES**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR KENSINGTON GATES TOWNHOMES ("Declaration") is made by KENSINGTON GATES, LLC, a Georgia limited liability company (the "Declarant").

**PART ONE: INTRODUCTION TO THE COMMUNITY**

*Declarant intends to develop the real property described in Exhibit "A" as a community of single family townhomes and related amenities. Declarant recognizes that one of the keys to a successful community is a mechanism for the long-term maintenance of the property intended for the common use of owners and the administration of covenants controlling maintenance, aesthetic appearance, and use of the property.*

**Article I      Creation of the Community**

By recording this Declaration in the Public Records of DeKalb County, Georgia, Declarant intends to establish a general plan of development for, and to provide for the overall governance, administration, maintenance and preservation of, the community known as Kensington Gates Townhomes (the "Community"). This Declaration sets forth various rights and duties which will be binding on and are intended to benefit each Unit and each present and future property owner in the Community. The provisions of this Declaration work together to establish a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of the Community.

Declarant has established Kensington Gates Townhome Community Association, Inc., a Georgia nonprofit corporation (the "Association"), to own and operate those areas of the Community which are intended for the common use and benefit of all owners, to maintain such Common Areas and certain other portions of the Community, and to administer and enforce the provisions of this Declaration and the other documents referenced in this Declaration. Each owner of property in the Community will be a member of the Association and, through such membership, will have the opportunity to participate in the governance and administration of the Community.

This document does not, and is not intended to, create a condominium under the Georgia Condominium Act, O.C.G.A. § 44-3-70, *et seq.*, nor does it submit the Community to the terms of the Georgia Property Owners Association Act, O.C.G.A. § 44-3-220, *et seq.*

**Article II      Concepts and Definitions**

The terms used in this Declaration and the attached exhibits are intended to have their normal, commonly understood definitions, unless otherwise specified. In order to minimize repetition, avoid confusion, and explain key concepts, some terms are capitalized to indicate that

they have special definitions. Whenever used in their capitalized form, those terms have the following meanings:

“Architectural Guidelines”: The guidelines, standards, and procedures adopted pursuant to Article IV which relate to construction, installation, placement, and modification of structures, improvements, landscaping, and other items on Units.

“Architectural Review Committee” or “ARC”: The committee formed pursuant to the terms of Section 4.2 that shall have authority over review and action on applications for architectural approval after Declarant’s right to do so has ceased.

“Area of Common Responsibility”: Those areas within or abutting the Community that the Association is authorized or responsible for maintaining as a Common Expense, including:

(a) the Common Area, except for those Limited Common Areas for which the Owners are specifically assigned responsibility pursuant to this Declaration or a Supplemental Declaration;

(b) all landscaping, entry features, and signage within or adjacent to public rights-of-way, to the extent that such public rights-of-way run through or adjacent to the Community; and

(c) such other areas, if any, for which the Association is assigned or assumes responsibility pursuant to Section 3.1 of this Declaration, any Supplemental Declaration, or any agreement with the owner of the property.

“Articles of Incorporation” or “Articles”: The Articles of Incorporation of Kensington Gates Townhome Community Association, Inc., as filed with the Secretary of State of the State of Georgia.

“Assessment”: An amount of money which the Owner of a Unit is obligated to pay to the Association and which, until paid, constitutes a lien on the title to the Unit which may be foreclosed in the same manner as a Mortgage under Georgia law.

“Association”: Kensington Gates Townhome Community Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

“Board of Directors” or “Board”: The body responsible for administration of the Association, selected as provided in the By-Laws and serving the same role as the board of directors under Georgia corporate law.

“By-Laws”: The By-Laws of Kensington Gates Townhome Community Association, Inc., attached as Exhibit “D,” as they may be amended.

“Common Area”: All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including any landscaping, walkways, parking areas, and other structures on and improvements to such real property. The term shall include the Limited Common Area, as defined below.

“Common Expenses”: The expenses which the Association incurs, or expects to incur, in exercising its authority and performing its responsibilities under the Governing Documents and Georgia law, and reasonable contributions to reserve funds, as the Board may find necessary and appropriate.

“Community”: The real property described in Exhibit “A,” as is submitted to the terms of this Declaration in accordance with Article XII.

“Community-Wide Standard”: The standard of conduct, maintenance, and appearance generally prevailing throughout the Community, or the minimum standards which the Declarant, the Board, or the Architectural Review Committee may establish for the Community as set forth in the Restrictions and Rules, the Architectural Guidelines, or by resolution or example, whichever is a higher standard. Such standard may contain both objective and subjective elements.

“Declarant”: Kensington Gates, LLC, a Georgia limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property in the Community for the purpose of development and/or resale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant. There shall be only one Declarant at any time.

“Developer Control Period”: The period of time during which the Declarant, by virtue of its Class “B” membership, is entitled to appoint a majority of the members of the Board of Directors pursuant to the By-Laws.

“General Assessment”: Assessments to fund Common Expenses for the general benefit of all Units, as described in Section 8.2(a).

“Governing Documents”: The Articles of Incorporation, the By-Laws, this Declaration, any Supplemental Declaration, the Architectural Guidelines, and the Restrictions and Rules, or any of the above, as each may be amended from time to time.

“Limited Common Area”: A portion of the Common Area primarily benefiting one or more, but less than all, Units, as more particularly described in Article XV.

“Member”: A Person holding a membership in the Association pursuant to Section 6.1.

“Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. A “Mortgagee” is the beneficiary or holder of a Mortgage.

“Owner”: One or more Persons who hold the record title to any Unit, other than a Mortgagee or other Person holding title merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.



**“Permitted Units”**: The maximum number of Units which may be developed within the property described in Exhibits “A” and “B” under applicable zoning.

**“Person”**: A human being, a corporation, a partnership, a trust, or any other entity recognized by law.

**“Public Records”**: The Office of the Clerk of the Superior Court or such other place as may be designated as the official location for recording of deeds and similar documents affecting title to real estate in DeKalb County, Georgia.

**“Restrictions and Rules”**: The restrictions and rules relating to uses, activities, and conduct within the Community set forth on Exhibit “C,” as they may be modified, expanded, and repealed pursuant to the procedures described in Article V.

**“Special Assessment”**: Assessments to cover unanticipated Common Expenses or Common Expenses in excess of those budgeted, as described in Section 8.2(b).

**“Specific Assessment”**: An Assessment against a particular Unit or Units for expenses that the Association incurs or expects to incur for any purpose described in Section 8.2(c).

**“Supplemental Declaration”**: An instrument filed in the Public Records pursuant to Article XII which imposes additional restrictions and obligations on the land described in such instrument.

**“Unit”**: Each separate parcel shown on the recorded subdivision plat of any portion of the Community, together with the structures and improvements, if any, constructed on each such parcel, which may be independently owned and conveyed, and which is improved or intended to be improved with a single family residential dwelling, whether free-standing or attached to other dwellings. The term shall refer to the land, if any, which is part of the Unit as well as any improvements on the Unit. The term shall not include Common Areas or property dedicated to the public.

## **PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

*The standards for maintenance, architecture, use, and conduct within the Community are what distinguish Kensington Gates Townhomes from other residential developments and make it a place that people want to call “home.” This Declaration establishes guidelines and procedures to establish and maintain community standards and to allow such standards to evolve as technology, public perception, and applicable law change.*

### **Article III Maintenance and Repair of Units**

#### **3.1. Maintenance of Units.**

Except to the extent that the Association agrees to assume certain maintenance responsibility with respect to Units or is assigned certain maintenance responsibility for Units pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit, each Owner shall be responsible for maintenance, repair, and replacement of all portions of

his or her Unit, and Limited Common Area assigned to the Unit pursuant to Article XV, and shall keep it in good order and repair, and in a neat, clean, and attractive condition consistent with the Community-Wide Standard.

3.2. Association Responsibility.

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(i) the roof, foundation and exterior portions of the dwelling located on the individual Unit, said maintenance and repair to be consistent with the provisions of this Declaration and the Architectural Standards set forth in Article IV below.

(ii) the Common Area, open space, private streets, private drives, shared driveways, vehicular gate systems, and all landscaping signage, lighting, irrigation systems and equipment, fences, walls, and other structures and improvements situated on the Common Area;

(iii) landscaping and signage within public and private rights-of-way within the Community;

(iv) any ponds, streams, and/or wetlands located within the Community and all drainage systems, storm water retention or detention systems for the Community, including any retaining walls, bulkheads, or dams (earthen or otherwise);

(v) the mowing of lawns on the Units, unless such area is fenced in or a dog is present in the exterior portion of such Unit (regardless of whether chained or restrained within an invisible fence); and

(vi) such portions of any property included within the Area of Common Responsibility as may be dictated by this Declaration, or any contract or agreement for maintenance thereof entered into by the Association.

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 Community Wide Standard.

(b) There are hereby reserved to the Association easements over the Community as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and improvements within the Area of Common Responsibility in continuous operation; except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described in Exhibits "A" and "B" of this Declaration.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessments, without prejudice to the right of the Association to seek reimbursement from the owner(s) of or other Persons responsible for certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

### 3.3. Insurance on Units; Damage to Units.

(a) Required Coverage. To the extent not insured by the Association as provided in Article VII below, each Owner shall obtain and maintain in effect at all times insurance in accordance with Section 7.7 below

Within 10 days of any written request from the Board of Directors, each Owner shall file with the Association a certificate from the insurer evidencing the insurance coverage required hereunder and, if requested, a copy of the individual policy or policies covering his or her Unit. Such Owner shall promptly notify the Board in writing in the event such policy is canceled.

In the event an Owner fails to obtain or maintain any insurance that the Owner is required to obtain hereunder, the Association may, but shall not be required to, obtain such insurance on behalf of the Owner and assess the costs thereof to the Owner and the Owner's Unit as a Specific Assessment.

(b) Repair and Reconstruction. In the event of damage to or destruction of any structures or improvements on the Unit, the Owner shall proceed promptly to repair, reconstruct or replace the damaged structures or improvements in a manner consistent with their original condition or such other plans and specifications as are approved in accordance with Article IV. The Owner shall pay any costs which are not covered by insurance proceeds.

## **Article IV Architectural Standards**

No person shall commence any activities within the scope of Section 4.1 ("Work") on any Unit unless and until the Owner of the Unit submits an application for approval of the proposed Work and such application is approved in writing by the Declarant or the Architectural Review Committee appointed pursuant to Section 4.2.

### 4.1. Applicability.

(a) No person other than the Declarant or the Association shall:

(i) construct, place, or install any structures or other improvements on a Unit or alter the exterior of any existing structures or improvements (except those devices specifically permitted without approval pursuant to the Architectural Guidelines or Exhibit "C");

(ii) plant, install, or remove any trees, shrubs, or other landscaping materials or make any encroachment onto the Common Area;

except in compliance with this Article and the Architectural Guidelines adopted pursuant to Section 4.3.

(b) This Article shall not apply to:

(i) improvements, renovations, or alterations within the interior of the Unit, provided they are not visible from outside of the structure and do not conflict with this Declaration or impair the structural integrity of any portion of the structure or adjacent Units;

(ii) repairs, maintenance, or rebuilding of existing structures in accordance with original plans and specifications;

(iii) the Declarant's activities; and

(iv) the Association's activities during the Developer Control Period.

#### 4.2. Architectural Review.

So long as the Declarant owns any property described in Exhibit "A" or "B" to this Declaration which is or may become a part of the Community, the Declarant shall have the exclusive authority to review and act upon all applications for approval and to exercise all authority of the "Reviewer" under this Article. Thereafter, such authority shall be exercised by the Architectural Review Committee comprised of three to five persons appointed by the Board, the members of which shall serve and may be removed and replaced in the Board's discretion. (For purposes of this Article, the "Reviewer" shall refer to the Declarant or the ARC, as appropriate under the circumstances).

The Declarant may, from time to time, but shall not be obligated to, delegate all or a portion of its authority to the ARC. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (i) the right of Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) the right of Declarant to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the authority and jurisdiction of the ARC shall be limited to such matters as Declarant specifically delegates to the ARC.

The Declarant or, upon passing of its authority to the ARC, the Board, may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. The Declarant or the ARC may retain architects, engineers, or other professionals to assist in reviewing any application and may charge the fees of any such professionals to the applicant.

#### 4.3. Guidelines and Procedures.

(a) Architectural Guidelines. Declarant or the Board may prepare Architectural Guidelines for the Community to provide guidance in submitting applications and to establish minimum standards for certain types of modifications to Units. Copies of the Architectural Guidelines shall be made available to any Owner upon request. Any such Architectural Guidelines are intended to provide guidance regarding matters of particular concern in

considering applications for architectural approval, but shall not be the exclusive basis for decisions of the Reviewer. Compliance with the Architectural Guidelines does not guarantee approval of any application.

All Work shall be conducted in strict compliance with any applicable Architectural Guidelines in effect at the time the application for such Work is approved, unless the Reviewer has granted a variance in writing pursuant to Section 4.5. So long as the Reviewer has acted in good faith, its findings and conclusions with respect to acceptability or appropriateness of proposed Work, and applicability of or compliance with the Architectural Guidelines and this Declaration, shall be final.

The Declarant shall have sole and full authority to amend the Architectural Guidelines as long as it has jurisdiction over architectural matters pursuant to Section 4.2. Thereafter, the ARC shall have the authority to amend the Architectural Guidelines. Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines; amendments may eliminate requirements previously imposed or otherwise make the Architectural Guidelines more or less restrictive.

(b) Procedures. An application for approval of any proposed Work shall be in the form required by the Reviewer and shall include plans and specifications ("Plans") in such detail as the Reviewer reasonably deems appropriate to evaluate such matters as the location, size, materials, manner of construction or installation, and other features of the proposed Work which the Reviewer deems relevant. The Reviewer may require the submission of such additional information as it deems necessary to consider any application. The Reviewer may refuse to consider any application if the Reviewer determines, in its reasonable discretion, that the Plans are not sufficiently legible, precise, or detailed or are otherwise insufficient in any respect.

In reviewing each submission, the Reviewer may consider (but shall not be limited to consideration of) quality of workmanship and design and compliance with the general intent of the Architectural Guidelines and the general scheme of development for the Community.

Decisions of the Reviewer may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements and as the Reviewer and members of the ARC change over time.

The Reviewer shall, within 30 days after receipt of each complete application or other required submission, advise the applicant, in writing at an address specified in the application, of (i) the approval of Plans, or (ii) the disapproval of such Plans, specifying the features of the Plans which are objectionable and suggestions, if any, for the curing of such objections. In the event the Reviewer fails to so advise the applicant by written notice within such 30-day period, the applicant may give the Reviewer written notice of such failure to respond. If the Reviewer has still not responded within 10 days after receipt of such notice, approval shall be deemed granted. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines unless a variance has been granted in writing pursuant to Section 4.5.

Notice shall be deemed to have been given at the time the envelope containing such notice, property addressed, and postage prepaid, is deposited with the U. S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice, shall, however, be sufficient and shall be deemed to have been given at the time of delivery.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, Declarant or the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard as provided for in the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

All Work shall be completed within 120 days of commencement or such shorter period as the Reviewer may specify in the notice of approval, unless completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Reviewer.

#### 4.4. No Waiver of Future Approvals.

Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

#### 4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when special circumstances require. However, the ARC may not authorize variances without the written consent of Declarant as long as the Declarant has any authority over architectural matters. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) preclude the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain necessary governmental approvals or permits, or to satisfy the terms or conditions of any financing, shall not be considered a hardship warranting a variance.

#### 4.6. Limitation of Liability.

The standards and procedures established pursuant to this Article are intended only to provide a mechanism for maintaining and enhancing the overall appearance and attractiveness of the Community, and shall not create any duty or responsibility to any Person to ensure the structural integrity or soundness of approved Work, the adequacy of soils or drainage, compliance with building codes and other governmental requirements, or any other matter. Neither Declarant, the Association, the Board, the ARC, nor any member of any of the foregoing shall be held liable for any injury, damages, or loss to any Person arising out of the approval or disapproval of any proposed Work. The Association shall defend the ARC and its members and

reimburse them for any loss, damages, and expenses incurred in any action arising out of their service on the ARC, to the extent provided in the Articles of Incorporation.

## **Article V Use and Conduct**

### **5.1. Framework for Regulation.**

Initial Restrictions and Rules governing use, conduct, and activities within the Community are set forth on Exhibit "C." This Article establishes procedures for adopting additional rules which interpret, expand, modify, or repeal the initial Restrictions and Rules set forth on Exhibit "C" in order to respond to unforeseen circumstances and changes in conditions, needs, desires, trends, and technology which inevitably will affect the Community.

### **5.2. Rule Making Authority and Procedures.**

#### **(a) Authority.**

(i) Subject to the terms of this Article and its duty to exercise business judgment and act reasonably, the Board may adopt rules applicable to the Common Area or Units. Except to the extent that the Governing Documents specifically assign authority to regulate a particular matter to the Board, any rulemaking action by the Board may be overturned by a majority vote of the Members pursuant to subsection (b) and the disapproval of the Class "B" Member, if any. The Board shall have no obligation to call for a vote of the membership except upon receipt of a petition of the members calling for a special meeting, as provided for in the By-Laws.

(ii) Subject to the terms of this Article, the Members may adopt rules applicable to the Common Area or Units upon the approval of a majority of the total Class "A" votes in the Association, with the consent of the Class "B" Member, if any.

(iii) Nothing in this Article shall authorize the Board or the Members to modify, repeal, or expand the Architectural Guidelines. In the event of any inconsistency between the Architectural Guidelines and the Restrictions and Rules, the Architectural Guidelines shall control.

(iv) The procedures required under this Section 5.2 shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, parking regulations and traffic controls.

(b) Notice to Owners. No rulemaking action shall be taken unless and until a meeting of the Board or the membership has been called to consider and discuss the proposed action. The notice of any meeting at which proposed rulemaking action is to be considered shall state that fact. Members shall have a reasonable opportunity to be heard at such meeting prior to any vote being taken on the proposed action. At least 10 days prior to the effective date of any rulemaking action approved under this Section, the Board shall send a notice to each Owner describing the action and its effective date.

### 5.3. Owners' Acknowledgment.

All Owners and occupants of Units are given notice that use of their Units and the Common Area is limited by the Restrictions and Rules as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into and recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the Restrictions and Rules may change from time to time. All purchasers of Units are on notice that the Association may have adopted changes. Copies of the current Restrictions and Rules may be obtained from the Association.

### 5.4. Rights of Owners.

(a) The Association shall provide, without cost, a copy of the current Restrictions and Rules to any requesting Member or Mortgagee.

(b) Except as may be specifically set forth in this Declaration (either initially or by amendment) or in Exhibit "C," neither the Board nor the Members may adopt any rule in violation of the following provisions:

(i) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

(ii) Activities Within Dwellings. No rule shall interfere with the activities carried on inside of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, that create an unreasonable source of annoyance or nuisance to the neighborhood, or that create any noxious or offensive activity.

(iii) Alienation. No rule shall prohibit the sale of any Unit, or require the consent of the Association or Board prior to the sale of any Unit.

(iv) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the Units or discriminate among Owners with respect to their rights to use the Common Area over the objection of any Owner expressed in writing to the Association. Nothing in this provision shall prevent the Association from adopting generally applicable rules for use of Common Area, or from assigning use of parking space on an equal basis among all Units. This provision does not affect the right to increase the amount of Assessments as provided in Article VIII.

(v) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power, subject to applicable law, to require that all occupants be members of a



single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(vi) Signs and Displays. No sign of any kind shall be erected by an Owner or an occupant of the Community without the prior written consent of the ARC. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. "For Sale" signs and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Unit. No rule shall prohibit Owners or occupants from displaying religious and holiday signs, symbols, and decorations in windows or doors of their Units of the kinds normally displayed in residential neighborhoods; however, the Association may regulate the time, place, manner, and extent of such displays for the purpose of minimizing disturbance to other Owners and occupants. No rules shall regulate the content of political signs; however, rules may regulate the time, place, and manner of posting such signs and establish design criteria for such signs.

(vii) Similar Treatment. Similarly situated Owners shall be treated similarly.

(viii) Speech. No rule shall restrict the freedom of speech of Owners or occupants, except that the Association may adopt time, place, and manner restrictions for the purpose of minimizing disturbance to other Owners and occupants of Units.

(ix) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Community.

The limitations in this Section 5.4 shall apply to the exercise of the rulemaking authority under this Article only; they shall not apply to amendments to this Declaration adopted in accordance with Section 20.2.

### **PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION**

*The success of the community is dependent upon the support and participation of every owner in its governance and administration. The Declaration establishes Kensington Gates Townhome Community Association, Inc., as the mechanism by which each Owner is able to provide that support and participate in the Community. While many powers and responsibilities are vested in the Association's board of directors, some decisions are reserved for the Association's membership -- the Owners of homes in the community.*

#### **Article VI Association Membership and Voting Rights**

##### **6.1. Membership**

(a) Qualification. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation. All co-Owners of a Unit shall be jointly obligated to perform the responsibilities of the Owner of the Unit, and any one co-Owner may be held fully responsible for all such obligations. The membership rights of an Owner which is a corporation, partnership, trust, or other entity may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Association's Secretary.

(b) Classes. The Association initially shall have two classes of membership, Class "A" and Class "B," with such rights and privileges as are described in this Declaration and in the Association's Articles and By-Laws. Class "A" Members shall be all Owners except the Class "B" Member, if any. The sole Class "B" Member shall be the Declarant. The Class "B" membership shall terminate 30 days after the earlier of:

(i) the date upon which 100% of the Permitted Units have been improved with a dwelling approved for occupancy and have been conveyed to Class "A" Members;

(ii) December 31, 2033; or

(iii) the date upon which the Declarant voluntarily terminates such membership by written notice recorded in the Public Records.

Upon termination of the Class "B" membership, the Declarant shall become a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

(c) Resignation of Declarant Appointees. As such time as the Class "B" membership is terminated in accordance with the provisions of Section 6.1(b) above, the Declarant, and/or any Officers and Directors appointed by Declarant to serve in such capacity may resign as an Officer and/or Director of the Association. Upon any such resignation, the Association shall fully, irrevocably and unconditionally remise, release and forever discharge Declarant and/or any such Officers and Directors, as applicable, Declarant's successors, assigns, beneficiaries, legal representatives, members, shareholders, directors, managers, officers, employees, agents, and advisors of and from any and all obligations, debts, demands, actions, causes of action, manners of action, suits, accounts, dues, covenants, contracts, agreements, judgments, controversies, damages and any and all claims, demands and liabilities whatsoever, both in law and at equity, known or unknown, that Association has as of the effective date of such resignation, may ever have had prior to the effective date of such resignation or may have thereafter against Declarant arising out of or relating to any act, omission or agreement of Declarant prior to the effective date of such resignation. In connection with such resignation, the Association shall accept a resignation of Declarant and/or any such Officers and Directors, as applicable, and reaffirm the foregoing release. The resignation of the Declarant and the acceptance of same by the Association shall be in the form attached hereto as Exhibit "E" and incorporated herein by this reference, and the Declarant and Association shall execute same.

## 6.2. Voting.

(a) Class "A". Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 6.1; however, there shall be only one vote per Unit. In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Association's Secretary in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B". The Class "B" Member shall not have any specific number of votes, rather, the consent or approval of the Class "B" Member is required for certain actions as specified in the relevant sections of the Governing Documents. The Class "B" Member is also

entitled to appoint members of the Board of Directors during the Developer Control Period, as specified in Sections 3.3 and 3.5 of the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents.

(c) Manner of Voting. On any matter as to which the Governing Documents or Georgia law require a vote or approval of the membership, such vote or approval may be obtained by affirmative vote at a meeting or by written consent, or by any combination thereof, unless the Governing Documents or Georgia law expressly require that the vote on such matter be taken at a meeting of the membership.

6.3 Officers and Directors. The Association shall and does indemnify the Officers and Directors to the fullest extent permitted under Georgia law, for any action or failure to act of the Officers and Director taken in the course of their duties in such capacity of Officer and/or Director of the Association. The indemnity is consistent with Section 8 of the Articles of Incorporation and Section 3.18(p) of the By-Laws. This indemnity shall apply to Declarant and/or any such Officers and Directors which are appointed by Declarant, as applicable.

## **Article VII Association Powers and Responsibilities**

### 7.1. Function of the Association.

The Association has been established for the purpose of administering the Community in accordance with the Governing Documents. Its responsibilities include, but are not limited to:

(a) management, maintenance, operation, and control of the Area of Common Responsibility;

(b) enforcing the Governing Documents, including such reasonable rules regulating use, conduct, activities, and aesthetic matters within the Community as may be set forth in or adopted pursuant to this Declaration; and

(c) administering and enforcing the architectural standards set forth in Article IV and in the Architectural Guidelines, upon delegation or termination of the Declarant's authority under Article IV.

### 7.2. Implied Rights; Board Authority.

The Association shall have the powers and authority granted by, and shall perform its functions in accordance with, the Governing Documents and the laws of the State of Georgia. The Association shall also have any right, power, or privilege which may reasonably be implied from, or which is reasonably necessary to exercise, any right, power, or privilege expressly granted by the Governing Documents or by law. Except as the Governing Documents or Georgia law may otherwise specifically provide, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

### 7.3. Area of Common Responsibility.

The Association shall operate the Common Areas and maintain the Area of Common Responsibility in good repair and in a neat, clean, and attractive condition consistent with the

Community-Wide Standard. By way of example and not limitation, the Association's responsibility shall include:

(a) maintaining and operating the Common Area and the facilities, improvements, and landscaping thereon, including, without limitation, entry features, entry signage, any detention ponds, and any street lights or other lighting located on Common Areas, except to the extent that Owners are responsible for maintaining Limited Common Area pursuant to this Declaration or a Supplemental Declaration;

(b) maintaining those portions of Units for which the Association is assigned or assumes responsibility pursuant to this Declaration;

(c) maintaining the streets, and private right of ways contained in the Community, including the gated entryways and guard stations or guard houses, if applicable; and

(d) maintaining the community's perimeter fencing, if any, as such fencing may be located on Units and Common Areas.

The Association may maintain other property that 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 Community-Wide Standard.

Except as the Governing Documents may otherwise specifically provide, all costs associated with operation of Common Areas, other than Limited Common Areas (if any), and maintenance, repair, or replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment. All costs which the Association incurs in maintaining, repairing, or replacing Limited Common Area parking spaces and other Limited Common Areas unique to a particular service area ("Service Area") shall be a Service Area expense to be assessed as a Service Area Assessment against those Units within the benefited Service Area. The Board may, however, allocate the expense of any maintenance, repair, or replacement that benefits one or more, but less than all Units, as a Specific Assessment pursuant to Section 8.2(c), according to the benefit received by such Units, as the Board may reasonably determine.

The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property that it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

Notwithstanding anything to the contrary contained herein, any guard station or guard house located at the entrance of the Community shall not be staffed by Declarant, and any decision to staff said guard house or guard station shall be made by the Association.

7.4. Association Insurance Policies and Coverage Governance. Insurance coverage on the Common Areas and Units shall be governed by the following provisions.

(a) Ownership of Policies. All insurance policies upon the Common Areas and Units shall be purchased by the Association for the benefit of all the Association and the Owners and their mortgagees as their interest may appear, and provisions shall be made for the issuance of certificates

of mortgagee endorsements to the mortgagees of Owners. Each Owner shall be an insured person under the liability insurance policy with respect to liability arising out of his or her membership in the Association. Owners of Units may, at their option, obtain insurance coverage at their own expense (i) upon their own personal property; (ii) their own improvements to their Unit; (iii) for their personal liability; and (iv) living expense and such other coverage, as they may desire, as the Association shall not purchaser insurance for said items.

(b) Coverage. All buildings and improvements upon the Common Area, Units and all personal property of the Association included in the Common Areas and facilities shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

- (i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement;
- (ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land;
- (iii) Such policies shall contain clauses provided for waiver of subrogation; and
- (iv) Floods for those Units in Flood Zone A, AE and V.

(c) Liability and Other Coverage. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner, as applicable. There shall also be obtained such other insurance coverage, as the Association shall determine from time to time to be desirable and necessary, said coverage to include, but not be limited to (i) officers' and directors' liability insurance in such amounts as the Board, in its business judgment, may determine necessary, but not less than One Million Dollars (\$1,000,000.00) per occurrence, ( if reasonably available); (ii) fidelity bonds covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds, if reasonably available (the amount of such bonds shall be in an amount which, in the Board's business judgment, reflects the estimated maximum amount of funds, including reserve funds, in the custody of the Association at any time during the term of the bond); (iii) flood insurance, if the Board of Directors determines it necessary or advisable; (iv) and, worker's compensation insurance, if and to the extent necessary to meet the requirements of law.

(d) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and shall be included as part of the annual assessment described in Article VIII below.

(e) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose stated herein or stated in the Bylaws and for the benefits of the Owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to Common Areas and facilities held for the Association.

(ii) Proceeds on account of damage to Units shall be held in undivided shares for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Association.

(iii) In the event a mortgagee endorsement has been issued for any Unit, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

(f) Deductibles. The Owners of Units suffering any loss shall be responsible to bear the cost of any deductibles among themselves, and if a deductible applies to multiple losses, the deductible shall be prorated among the Owners based on the amount of loss incurred individually to the aggregate losses. The Association shall bear the deductible for any Units related to the Common Areas.

7.5. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association, as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(a) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provisions made therefor.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.

7.6. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments, plus reserves accumulated.

7.7. Association's Insurance Rights on Units. The Association may elect not to provide property insurance coverage on the individual Units within the Properties, and the Association agrees to give the Owners at least ninety (90) days of written notice of such election. The Owners and their mortgagees agree to such a right and election on the part of the Association. Upon receipt of such written notice of election, the Owners, and their mortgagees, if applicable, agree to obtain property insurance coverage on his/her Unit pursuant to the following provisions:

(a) Policies. All insurance policies upon the Units and all improvements thereon shall be purchased by the Owners at their sole cost and expense for the benefit of the Owner, the other Owners and the Association and their mortgagees as their interests may appear, and provisions shall be made for the issuance of certificates of insurance. Further, Owners may, at their option, obtain insurance coverage at own expense upon (i) their own personal property; and (ii) such other coverage, as they may desire.

(b) Coverage. Each Unit and the improvements thereon shall be insured by each Owner in an amount equal to one hundred percent (100%) of the insurable replacement value and the

Association may require a minimum amount on a yearly basis but shall provide notice to Owners thereof. Such coverage shall provide protection against:

- (i) Loss or damage by fire and other hazards coverage by a standard extended coverage endorsement;
- (ii) Such other risks as from time to time shall be customarily coverage with respect to buildings on the land;
- (iii) If the Property is located in an area likely to encounter hurricanes, hurricane coverage and wind coverage; hail coverage; earthquake coverage; and flood coverage; and
- (iv) Such other coverages as the Owner may require or that the Association may require from time to time.

Insurance policies obtained by the Owners on the Units must provide that:

- (i) Each Owner is an insured under the policy with respect to liability arising out of his/her ownership of the Unit.
  - (ii) The insurer waives its right to subrogation under the policy against any other Owner and the Association.
  - (iii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the Policy.
  - (iv) The Association shall be named a loss payee, for the purposes set forth in this Declaration.
  - (v) Such policy shall be primary and non-contributory, in the event that there is other insurance for the benefit of an Owner covering the same risk coverage by the policy to be obtained by the Owner.
  - (vi) All Property Insurance policies shall have an inflation guard endorsement and an agreed amount endorsement to the extent available.
  - (vii) No policy obtained by an Owner covering his or her Unit may be cancelled or substantially modified without at least thirty (30) days prior written notice to the Association and any mortgagee.
  - (viii) All Property Insurance policies shall be written with a company licensed to do business in a state where the Property is located holding a rating of B+ or better in the financial category as established by A.M. Best Company, Inc., if reasonably available, or if not reasonably available, the most nearly equivalent rating.
- (c) Liability. Public liability insurance shall be secured by each Owner with limits of liability of no less than Three Hundred Thousand Dollars (\$300,000.00) per occurrence and shall include an endorsement to cover liability of the Association.

(d) Other Insurance Coverages. There shall also be obtained such other insurance coverage, as the Association shall direct the Owners to obtain from time to time.

(e) Premiums. Premiums for insurance policies purchased by each Owner shall be paid by the Owner without right of reimbursement from the Association.

(f) Proceeds. All insurance policies purchased by the Owner shall be for the benefit of the Owner, the other Owners and the Association, and their mortgagees, as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to Units shall be held for the Owners of the damaged Units to pay for the cost of repairing the damage suffered by each Owner.

(ii) In the event a mortgagee endorsement has been issued for any Unit, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

(g) Deductibles. The Owners suffering any loss shall be responsible to bear the cost of any deductibles. Each Owner shall obtain an insurance policy that does not have any deductible in excess of One Thousand Dollars (\$1,000.00).

(h) Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association, as insurance trustee shall be distributed to or for the benefit of the Owners and mortgagees in the following manner:

(i) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provisions made therefor.

(ii) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners of the policies and the mortgagees thereon.

(i) Certificates of Insurance Coverage. At the time of the closing on the Unit, the Owner shall provide to the Association a certificate of insurance naming the Association as loss payee and providing for the coverages set forth herein, with a coverage period continuing through the next December 31. Each year thereafter prior to January 1, each Owner shall provide the Association a replacement certificate of insurance coverage naming the Association as loss payee and providing for the insurance coverages set forth herein, with a coverage period of January 1 through December 31 for the applicable year.

(j) Authority and Power of Attorney. Exclusive authority to adjust losses under the insurance policies obtained by the Owners shall be vested in the Association, provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Each Owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or its designated representative, as attorney-in-fact for the purposes of collecting and disbursing the insurance proceeds on insurance policies obtained by the owners, the negotiation of losses and execution of releases of liability, the execution of all documents, and the



performance of all acts necessary to accomplish such purposes. This power is for the benefit of each and every Owner and their respective mortgagees, and the Association, which runs with the land and is coupled with the interest.

(k) Additional Property Coverage. The Association may procure insurance coverage on improvements within the Properties which would cover uninsured losses, but in no way is the Association obligated to obtain such insurance. The Owners agree to pay the costs of such secondary coverage that shall apply only after all other insurance policies have paid on a primary non-contributory basis. In no event shall any insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by the Owners or the mortgagees. The Owners agree that the cost of such secondary insurance shall be included in their assessments under Article VIII. Further, if an Owner fails or refuses to provide the Association with a copy of the insurance policy required under Section 7.7 (or renewal or other reasonable evidence of current property damage and casualty insurance coverage on the Unit) within thirty (30) days following the Association's written notice to provide such insurance policy or evidence, the Association shall have the right to obtain and purchase such insurance as required by this Article on behalf of such Owner. In such event, the cost incurred by the Association procuring such insurance shall be assessed against the applicable Owner as an assessment levied against the Owner's Unit pursuant to Article VIII.

(l) Declarant Exemption. Provisions of this Article shall not apply to any Units owned by Declarant, which Declarant shall insure under Declarant's corporate insurance policy or policies.

(m) Damage and Destruction. Any damage or destruction shall be repaired or reconstructed by the Association, unless by a vote of at least three-fourths (3/4) of all Members entitled to vote, a decision is made within sixty (60) days after the damage or loss occurs not to repair or reconstruct and the Association consents to not repair or reconstruct, and further provided, the Declarant consents not to repair or reconstruct as long as it so owns a Unit within the Community. In the event that it should be determined by the Declarant, Association and Members in the manner described in this Declaration that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event the Unit shall be restored to its natural state by the Owners thereof and maintained as an undeveloped portion of the Property by the Association in a neat and attractive condition

(n) Mortgages and Assessments. Each Owner agrees to obtain the written permission of his or her mortgagee if applicable, for the Owner to obtain insurance on his/her unit without the Association being responsible for same on the Unit and agrees to give the Association such written permission. Upon their satisfying the requirements of this section, the Owner will not be billed for insurance obtained by the Association on the Owner's individual Unit, and the Owner's assessments shall be reduced accordingly.

(o) Insufficient Insurance. In the event the improvements that are on the Unit shall suffer damage or loss from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss and damage and payable by reason thereof shall not be sufficient to pay the cost of repair, restoration or reconstruction, and the Owner of the Unit shall be assessed pursuant to Article VIII for the additional costs to make the repairs, restoration or reconstruction of the Unit so damaged and lost and such assessment shall have the same force and effect, if not paid, may be enforced in the same manner as herein provided for the non-payment of assessments.

7.8. Insurance Representative; Power of Attorney. Notwithstanding any of the foregoing provisions of this Article, or any requirement relating to property or liability insurance herein, there

may be named, under any policy obtained by the Association, as an insured on behalf of the Association, its authorized representative, including any trustee with whom the Association may enter into an insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy. Each Owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or such designated representative, or such successor, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for Owners and their first mortgage holders, as their interests may appear. This power is for the benefit of each and every Owner, and their respective first mortgage holders, and the Association, runs with the lands, and is coupled with an interest.

7.9 Repair and Reconstruction After Casualty Loss. In the event of damage to or destruction of all or part of the Community insured under policies maintained by the Association, as a result of fire or other casualty, unless (i) this Declaration is terminated, (ii) reconstruction or repair is prohibited by law or by local health or safety statute, or (iii) Owners holding at least 75% of the total Association vote, including the Declarant if the Declarant owns any property within the Community, and the Owner(s) of the damaged Unit(s), if applicable, vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure in accordance with the original plats of survey and floor plans. In the event of substantial damage or destruction, each Mortgagee shall be entitled to written notice of the damage, and nothing in the Governing Documents shall be construed to afford a priority to any Owner with respect to the distribution of proceeds to any such Unit.

The procedure for repair and reconstruction shall be:

(i) Immediately after a fire or other casualty causing damage to any portion of the Area of Common Responsibility, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures to a condition as good as that which existed before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(ii) If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, Special Assessments shall be made against all of the Units without necessity of approval of the membership. If after repair and reconstruction is completed, there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

(iii) Any such reconstruction or repair shall be substantially in accordance with the plats of survey, floor plans, and specifications under which the damaged structures were originally constructed.

(iv) Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a basis for any claim, proceeding, or action by

the Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the plats of survey, floor plans, and specifications under which the improvements were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(v) The net proceeds of the insurance collected because of a casualty and the funds collected by the Association from Assessments against Owners because of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this subparagraph.

(vi) The construction fund shall be paid by the Association in appropriate progress payments to such contractors, suppliers, and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as the Board may designate.

#### 7.10. Safety and Security.

**Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their personal property and Unit. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security within the Community. However, neither the Association nor the Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.**

**No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and agrees to inform any and all tenants and occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor or assign of each are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.**

#### 7.11. Provision of Services.

The Association may arrange for or provide services to the Owners and their Units and shall be authorized to enter into contracts or other agreements with third parties, including Declarant, to provide such services. By way of example, such services may include trash collection, lawn maintenance, pest control, cable television service, fire protection, security monitoring, and other similar services, although the Association shall have no obligation to provide any such services. The Board may modify or cancel any services provided to the Owners and their Units at any time in its discretion.

The cost of any such services provided to all Units pursuant to any bulk agreement with the Association shall be a Common Expense and/or the Association may charge use and

consumption fees for selected services. No Owner shall be exempt from the obligation to pay for any such services undertaken as a Common Expense based upon non-use or any other reason. The cost of any special services or benefits provided to a particular Service Area shall be assessed against the Units within the benefited Service Area as a Service Area Assessment.

## **Article VIII Association Finances**

### **8.1. Budgeting for Common Expenses.**

At least 30 days before the beginning of each fiscal year, the Board shall prepare an operating budget reflecting the estimated Common Expenses which the Association expects to incur during the coming year. The budget shall specifically include the insurance coverages set forth in Article VII above. The budget shall separately list (i) those estimated Common Expenses which benefit and are to be allocated among all Units and (ii) those estimated Common Expenses, if any, which benefit and are to be allocated among less than all Units.

The budget may include a contribution to one or more reserve funds, and shall include an annual contribution to a reserve fund for repair and replacement of any assets for which the Association is responsible which have an expected useful life of three years or more. The amount of such contribution shall be based upon the Board's reasonable estimate of the annual contribution needed over the remaining estimated useful life of each asset to provide sufficient funds for repair or replacement of such asset as required.

The Board shall send a copy of the budget to each Owner at least 45 days prior to the effective date of such budget. The budget shall automatically take effect on the date specified by the Board unless Members entitled to cast at least 75% of the total Class "A" votes in the Association veto such budget at a meeting of the Members. The Board shall have no duty to call a meeting of the Members except upon receipt, within 10 days after the budget is sent to each Owner, of a petition signed by the Members as required for a special meeting pursuant to the By-Laws.

The Board may revise the budget from time to time during the fiscal year to reflect unanticipated expenses or changes in anticipated expenses, as the Board deems appropriate. The Board shall provide a copy of any revised budget to the Members and the Members shall have the right to veto any change from the budget previously in effect, in the same manner as described above.

If a budget is not adopted for any year, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year.

### **8.2. Funding Common Expenses.**

(a) General Assessments. Common Expenses as reflected in the annual operating budget which directly or indirectly benefit all of the Units shall be allocated equally among all of the Units which are subject to Assessment under Section 8.3 as a General Assessment. The Board shall determine the amount of the General Assessment for each fiscal year at the time the budget is prepared, subject to adjustment in the event that the budget is revised during the year. Notice of the amount of the General Assessment, as it may be adjusted, shall be sent to each Owner with a copy of the budget.

The General Assessment shall be an annual Assessment due and payable in advance on the first day of each fiscal year; however, the Board may permit any General Assessment to be paid in monthly, quarterly, or semi-annual installments, in its discretion.

(b) Special Assessments. Any Common Expenses of a non-routine nature, or which were not anticipated in the Association's annual operating budget, or which exceed budgeted amounts, may be assessed as a Special Assessment. Special Assessments shall be allocated equally among all Units subject to Assessment. Special Assessments shall be payable in such manner and at such times as the Board may determine, and may be payable in installments over a period of more than one year.

Notice of any Special Assessment shall be sent to each Owner at least 45 days prior to the due date of such Special Assessment (or the first installment thereof). Any Special Assessment may be vetoed by the Members in the same manner and by the same vote as the annual operating budget pursuant to Section 8.1.

(c) Specific Assessments. The Association may assess the following expenses as a Specific Assessment against a particular Unit or Units:

(i) those costs, including overhead and administrative costs, of providing benefits, items, or services to a Unit or the occupants thereof upon request of the Owner, which Assessments may be made in advance of the provision of the requested benefit, item, or service as a deposit against costs to be incurred on behalf of the Owner; and

(ii) those costs incurred in bringing the Unit into compliance with the Governing Documents or as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, or guests (subject to the notice and hearing requirements set forth in Section 19.4).

(d) Initiation Fee. The Association shall have the right to charge an initiation fee upon (i) the sale of a Unit to an Owner by Declarant or any approved builder or successor-in-title to Declarant, or (ii) the sale of a Unit from an Owner to a third party.

### 8.3. Payment of Assessments.

(a) The obligation to pay Assessments for a Unit shall commence on the first day of the month following (i) the Declarant's conveyance of such Unit to a Person other than Declarant or a Declarant approved builder; and (ii) the issuance of a certificate of occupancy for a residential building on such Unit; however, no Assessments shall be due prior to the month in which the Board first determines a budget and gives notice of the Assessment due pursuant to this Article. The first General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time (i) and (ii) above are satisfied.

(b) Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of Assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, Assessments may be paid in two or more installments. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day

of each fiscal year. If any Assessment or other charges against a Unit become delinquent, the Board may, upon at least 10 days' written notice, require any unpaid installments of all outstanding Assessments on such Unit to be paid in full immediately.

(c) Upon written request, the Association shall furnish to any Owner liable for any type of Assessment a certificate in writing signed by an Association officer setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(d) Failure of the Board to fix Assessment amounts or rates or to deliver or mail an Assessment notice to each Owner shall not waive the Association's right to collect such Assessments retroactively or release any Owner from the obligation to pay any Assessment when levied. Each Owner shall continue to pay General Assessments on the same basis as during the last year for which an Assessment was levied, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls.

#### 8.4. Budget Deficits During Developer Control Period.

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

#### 8.5. Personal Obligation and Lien for Assessments; Delinquencies.

(a) Personal Obligation. Except as otherwise provided in this Section, each Owner, by accepting a deed or entering into a recorded contract of sale for any Unit, agrees to pay the Assessments authorized in this Declaration. No Owner may exempt himself or herself from liability for Assessments by non-use of the Common Area, abandonment of his or her Unit, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No reduction or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or the Board to take some action or perform some function required of it, or for inconvenience arising from the making of repairs or improvements, or otherwise as a result of any action or inaction by the Association.

All Assessments, together with:

(i) interest computed from the due date of each Assessment at a rate of 12% per annum (or the maximum rate permitted by Georgia law if less than 12% per annum);

(ii) late charges in such amount as the Board may establish by resolution (subject to the limitations of Georgia law); and

(iii) costs of collection (including reasonable attorneys' fees, whether or not suit is filed);

shall be the personal obligation of the Person who is the Owner of the Unit at the time the Assessment is due. Upon a transfer of title to a Unit, the new Owner shall be jointly and severally liable with the former Owner for any Assessments and other charges due at the time of conveyance (i.e., both are responsible and either may be required to pay the full amount due to the Association), unless the new Owner took title following foreclosure of a Mortgage which has priority over the Association's lien under subsection (b) below.

(b) Lien for Assessments. The Association shall have a lien against each Unit to secure payment of all delinquent Assessments, as well as interest, late charges (subject to the limitations of Georgia law), costs of collection (including attorneys' fees), and any other charges authorized in Section 8.5(a). Such lien shall be perpetual upon the recordation of this Declaration in the Public Records. Such lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, Assessments, and other levies which by law would be superior; and (ii) the lien or charge of any first Mortgage recorded in the Public Records which was made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Association may bid for the Unit at the foreclosure sale and thereafter hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no Assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual Assessment, its pro rata share of the Assessment that would have been charged such Unit had it not been acquired by the Association.

The Association may sue for unpaid Assessments and other charges authorized hereunder without foreclosing or waiving its lien.

The sale or transfer of any Unit shall not affect the Association's lien or relieve such Unit from the lien securing any subsequent Assessments. However, the sale or transfer of any Unit pursuant to the foreclosure of a first Mortgage shall extinguish the lien as to any installments of such Assessments due prior to the Mortgagee's foreclosure. Uncollected Assessments shall be deemed Common Expenses collectible from Owners of all Units subject to Assessment under Section 8.3, including such acquirer, its successors and assigns. The subsequent Owner of the foreclosed Unit who obtains title to a Unit pursuant to the foreclosure of a first Mortgage shall not be personally liable for Assessments due prior to such acquisition of title. Such unpaid Assessments shall be deemed to be Common Expenses which the Association may thereafter allocate among all Owners as part of the General Assessment under Section 8.2(a).

Each Owner, by accepting a deed to any Unit, consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association.

#### 8.6. Exempt Property.

The following property shall be exempt from payment of General Assessments and Special Assessments:

- (a) all Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility;
- (b) any property dedicated to and accepted by any governmental authority or public utility; and
- (c) any property which does not have a completed dwelling constructed thereon.

### **PART FOUR: COMMON AREA**

*One of the primary functions of the Association is to own, operate, and maintain those portions of the Community, called Common Areas, which are designed and intended for the common use and enjoyment of all residents and the common benefit of all Units.*

#### **Article IX Acceptance, Management, and Control of Common Area.**

##### 9.1. Control of Common Area.

The Association, acting through its Board, may acquire, hold, and dispose of real property (i.e., land and improvements to the land and interests in land) and personal property (for example, furnishings, equipment, and other items which are not attached to land), subject to the limitations set forth in this Declaration. Any such property shall be Common Area during such period as it is held by the Association and shall cease to be Common Area upon transfer or conveyance of the Association's interest in the property. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for management, operation, and control of the Common Area.

##### 9.2. Acceptance of Common Area Conveyed by Declarant.

The Declarant and its designees may convey to the Association real and personal property, including easements, leaseholds, and other interests in property. Such property shall be accepted by the Association "as is" and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

##### 9.3. Reconveyance of Common Area to Declarant.

Upon request of the Declarant, the Association shall reconvey to the Declarant any unimproved property or interests therein which the Declarant originally conveyed at no cost to the Association, to the extent conveyed by the Declarant in error or needed by the Declarant to make minor adjustments in property lines or to accommodate public or quasi-public facilities. The Declarant shall not be required to pay for such property, but shall pay the costs of preparing and recording the deed to carry out such reconveyance.



## **Article X      Rights to Use Common Area**

### 10.1. Easement in Common Area.

Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) the Governing Documents, any other applicable covenants, and any other instrument affecting title to the property;

(b) the rights of each Owner to the exclusive use of any Limited Common Area assigned to such Owner's Unit;

(c) any restrictions or limitations contained in any deed or other document conveying an interest in such property to the Association;

(d) the right of the Board and the membership to adopt, amend, and repeal rules regulating the use and enjoyment of the Common Area;

(e) the right of the Association, acting through the Board, to dedicate, transfer, or grant easements over all or any part of the Common Area, subject to such approval requirements as may be set forth elsewhere in this Declaration, except that any transfer or encumbrance of Common Area shall be subject to an easement over such Common Area for access to all Units served thereby; and

(f) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

### 10.2. Assignment of Rights to Use Common Area.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, occupants of the Owner's Unit under any lease authorized pursuant to this Declaration, and guests, subject to reasonable regulation by the Board. The Owner of a Unit which is rented under a lease authorized pursuant to this Declaration shall be deemed to have assigned to the tenant all of such Owner's rights to use facilities on the Common Area for the term of the lease.

## **Article XI      Changes in Common Area**

### 11.1. Common Area to Remain Undivided.

Except as permitted in this Declaration, ownership of the Common Area shall remain undivided. No Person shall seek to have a court partition or divide the ownership interest of all or any portion of the Common Area unless the portion of the Common Area which is the subject of such action has been removed from the provisions of this Declaration or unless all Owners and Mortgagees have consented in writing. This Section shall not apply to any property which was formerly Common Area once the Association no longer holds any legal interest in such property. Moreover, this Section shall not prohibit the Board from acquiring and disposing of tangible

personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

#### 11.2. Conveyance or Dedication of Common Area.

(a) The Association, acting through the Board without a vote of the membership, may grant licenses and leases of portions of the Common Area, and may grant easements over the Common Area for installation and maintenance of utilities or drainage facilities or for other purposes, to the extent not inconsistent with the intended use of the Common Area.

(b) Except as provided in Sections 9.3 and 11.2(a), the Association shall not mortgage or convey any real property comprising all or any portion of the Common Area without the approval of Owners representing at least 67% of the total Class "A" votes in the Association and the written consent of the Class "B" Member, if such exists.

(c) The Association may dedicate portions of the Common Area to DeKalb County, Georgia, or to any other local, state, or federal governmental or quasi-governmental entity, subject to such approval as may be required by Section 11.2(b).

#### 11.3. Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 12.1) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking, Declarant, so long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 12.1, and Members representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.4 regarding funds for restoring improvements shall apply.

(b) If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

#### 11.4. Improvements to Common Area.

During the Developer Control Period, the Association shall not incur any Common Expenses for development or construction of capital improvements to the Common Area unless approved by Persons entitled to cast a majority of the total Class "A" votes in the Association.

## **PART FIVE: DEVELOPMENT OF THE COMMUNITY**

*The Declaration reserves various rights to the Declarant and the Association in order to facilitate the smooth and orderly development and administration of the Community.*

### **Article XII Expansion by Declarant**

Declarant reserves the right to expand the Community to include all or any portion of the real property described in Exhibit "B." Such right shall expire seven years after the date on which this Declaration is recorded in the Public Records. Declarant may assign this right to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such assignment shall be in writing, signed by the Declarant, and recorded in the Public Records.

Expansion of the Community shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being added to the Community. Such Supplemental Declaration shall not require the approval of the Members, but shall require the consent of the owner of such property, if other than Declarant.

Nothing in this Declaration shall be construed to require Declarant or any successor to expand the Community or develop any of the property described in Exhibit "B" in any manner whatsoever.

#### 12.2. Expansion by the Association.

The Association may expand the Community to include additional real property with the consent of the owner of such property, the approval of Owners entitled to cast a majority of the Class "A" votes represented at a meeting called for such purpose, and the consent of Declarant so long as Declarant has any rights under Section 12.1.

Such expansion shall be accomplished by filing in the Public Records a Supplemental Declaration describing the property being added to the Community. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, by the owner of such property, and by Declarant, if Declarant's consent is required.

#### 12.3. Additional Covenants and Easements.

Declarant may impose additional covenants, restrictions, and easements on any property in the Community by filing a Supplemental Declaration in the Public Records setting forth such additional covenants, restrictions, and easements. Any such Supplemental Declaration shall require the written consent of the owner(s) of the property upon which the additional provisions are being imposed, if other than Declarant. Any Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

### **Article XIII Additional Rights Reserved to Declarant**

#### 13.1. Withdrawal of Property.

Declarant reserves the right to amend this Declaration, so long as it has a right to expand the Community pursuant to Section 12.1, for the purpose of removing any portion of the property in the Community which is not then improved with dwellings from the coverage of this Declaration. Such an amendment shall not require the consent of any Person other than the Owner of the property to be removed.

#### 13.2. Marketing and Sales Activities.

Declarant and builders authorized by Declarant may construct and maintain upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and authorized builders shall have easements for access to and use of such facilities at no additional expense to Declarant.

#### 13.3. Right to Develop.

Declarant and its employees, agents, and designees shall have a right and easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

For so long as Declarant owns any portion of the Community, Declarant may designate sites which it owns within the Community for public or quasi-public facilities and neither the Association nor any Owner shall have a right to object to such designation.

#### 13.4. Right to Approve Changes in Community Standards.

No amendment to or modification of the Restrictions and Rules or the Architectural Guidelines made after termination of the Developer Control Period shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 12.1.

#### 13.5. Right to Transfer or Assign Declarant Rights.

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Public Records.

The Declarant may permit other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right permanently or in its entirety, and in such case it shall not be necessary to record any written assignment except as may be required to evidence Declarant's consent to such exercise.

### 13.6. Exclusive Rights To Use Name of Development.

No Person shall use the name “Kensington Gates Townhomes” or any derivative of such name or in logo or depiction in any printed or promotional material without Declarant’s prior written consent. However, Owners may use the name “Kensington Gates Townhomes” in printed or promotional matter where such term is used solely to specify that particular property is located within the Community known as Kensington Gates Townhomes and the Association shall be entitled to use the words “Kensington Gates Townhome” in its name.

### 13.7. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner’s concerns and conduct their own inspection.

### 13.8. Termination of Rights.

The rights reserved to Declarant under this Article shall terminate upon the earlier of (a) 15 years from the date this Declaration is filed in the Public Records, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

## **Article XIV Easements**

### 14.1. Easements for Encroachment.

The Declarant hereby creates, for the benefit of each Unit and each portion of the Common Area, reciprocal easements for encroachment due to the unintentional placement, or the settling or shifting, of the structures or improvements on such Unit or portion of the Common Area, and for maintenance and use of any encroaching structure or improvement, except that no easement for encroachment shall exist:

- (a) for any structure or improvement constructed in violation of the Governing Documents;
- (b) beyond a distance of three feet, as measured from any point on the common boundary along a line perpendicular to such boundary; or
- (c) if such encroachment occurred due to reckless, willful, and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

### 14.2. Easements of Support.

Every portion of a Unit contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

#### 14.3. Easements for Maintenance of Adjoining Units.

There shall be and is hereby imposed on each Unit an easement for reasonable ingress and egress by or on behalf of the Owner of any adjoining Unit for the purpose of repair, maintenance, or replacement of improvements on such adjoining Owner's Unit. Such easement shall be exercised only during reasonable hours and after reasonable notice to the Owner or occupants of the Unit upon which entry is to be made.

#### 14.4. Cross-Drainage Easements.

Each Unit shall be burdened with a perpetual, non-exclusive easement over that portion of the Unit which is not improved with structures, for the purpose of drainage of stormwater runoff from any portion of the Community; however, no Person shall alter the natural drainage of stormwater from any Unit once construction of initial improvements has been completed so as to unreasonably increase the drainage of stormwater onto adjacent portions of the Community without the consent of the Owner(s) of the affected property, the Board, and the Declarant as long as it owns any property subject to the Declaration.

#### 14.5. Easements for Utilities.

(a) Installation and Maintenance. The Declarant reserves for itself, so long as the Declarant owns any property described in Exhibit "A" or "B" of this Declaration, and for the Association, suppliers of utilities to the Community, and such other Persons as the Declarant or the Association may designate, perpetual non-exclusive easements throughout the Community (but not through a structure) to the extent reasonably necessary for the purposes of:

(i) installing, on property which Declarant owns or within easements reserved for such purpose on recorded plats, utilities and infrastructure to serve the Community, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, irrigation systems, drainage systems, street lights, and signage;

(ii) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described in Section 14.5(a)(i); and

(iii) access to read, maintain, repair, and replace utility meters.

(b) Specific Easements. The Declarant also reserves for itself the non-exclusive right and power to grant and record in the Public Records such specific easements as may be necessary, in the sole discretion of the Declarant, in connection with the orderly development of any property described in Exhibits "A" and "B." The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement.

Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work.

Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(d) Limitation of and Release From Burden of Easements. Declarant reserves the right (i) to release all or any portion of the Community from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section 14.5, or (ii) to define the limits of any such easements; provided that Declarant shall relocate, at its own expense, any utility lines or facilities located on or under that portion of the Community being released.

#### 14.6. Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any property described in Exhibit "B" or any property adjacent to the property described in Exhibit "B", whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities on such property. Declarant agrees that it or the Person exercising such easement shall be responsible for any damage caused to the Common Area as a result of the exercise of such easement.

#### 14.7. Easements for Maintenance, Emergency, and Enforcement.

The Declarant grants to the Association easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.3. The Association shall also 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 and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

#### 14.8. Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within the Community, including Units, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

#### 14.9. Easements to Exercise Powers and Perform Responsibilities.

In addition to all other easements granted elsewhere in this Declaration, the Declarant hereby reserves to itself and grants to the Association, perpetual, non-exclusive easements over the Community as necessary to enable the Declarant and the Association, and their respective agents, employees, and assigns, to exercise the authority and fulfill the responsibilities that each respective entity is granted or assigned by the Governing Documents.

#### **Article XV Limited Common Areas**

Certain portions of the Common Area, designated "Limited Common Area," may be reserved for the exclusive use of Owners and occupants of the Units to which they are assigned. By way of illustration, and not limitation, Limited Common Area may include parking spaces rear patios and other portions of Common Area. All costs associated with the maintenance, repair, replacement, and insurance of a Limited Common Area shall be allocated among the Owners of the Unit(s) to which the Limited Common Area is assigned.

Declarant and the Association may amend this Declaration to reassign any Limited Common Area with the consent of the Owners of the Units to which such Limited Common Area is assigned and to which it is to be reassigned. Any change in assignment of Limited Common Area shall be subject to the approval requirements set forth in Section 20.2.

#### **Article XVI Party Walls and Fences**

##### 16.1. General Rules of Law to Apply.

Each wall or fence built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. 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 negligence or willful acts or omissions shall apply thereto.

##### 16.2. Maintenance; Damage and Destruction.

The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

##### 16.3. Right to Contribution Runs With the Land.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.



#### 16.4. Disputes.

Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XVIII.

### **PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

*This part of the Declaration creates special rights and protections to facilitate the sale of homes in the Community, establishes a mechanism for the amicable resolution of disputes, should they arise, and provides procedures for enforcing the provisions of the Governing Documents when necessary.*

#### **Article XVII Protection of Mortgagees**

##### 17.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (stating the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby 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 a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner which is not cured within 60 days;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

##### 17.2. Special FHLMC Provision.

So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 67% of the first Mortgagees or Members representing at least 67% of the total Association vote consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, Assessments, dues, or other charges which may be levied against an Owner of a Unit;

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance, or maintenance of Units and the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

### 17.3. Amendments to Documents.

The following provisions do not apply to amendments to the constituent documents or to the addition of land in accordance with Article XII.

(a) The consent of Members representing at least 67% of the Class "A" votes and of Declarant, so long as it owns any land subject to this Declaration, and the approval of the Eligible Holders of first Mortgages on Units to which at least 67% of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

(b) The consent of Members representing at least 67% of the Class "A" votes and of Declarant, so long as it owns any land subject to this Declaration, and the approval of Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, By-Laws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) Assessments, Assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Area;
- (vi) responsibility for maintenance and repair of the Community;

- (vii) expansion or contraction of the Community or the addition, annexation, or withdrawal of property to or from the Association;
- (viii) boundaries of any Unit;
- (ix) leasing of Units;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;
- (xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or
- (xii) any provisions included in the Governing Documents which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

#### 17.4. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first 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 Area.

#### 17.5. Notice to Association.

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

#### 17.6. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

### **Article XVIII Dispute Resolution and Limitation on Litigation**

#### 18.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

- the interpretation, application, or enforcement of the Governing Documents;
- the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- the design or construction of improvements within the Community;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 18.2:

(i) any suit by the Association to collect Assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards);

(iii) any suit between Owners, which does not include the Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 18.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

## 18.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 18.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Metropolitan Atlanta, Georgia area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

### 18.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of persons entitled to cast 75% of the total Class "A" votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Developer Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of Assessments and foreclosure of liens;

- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

## **Article XIX Compliance and Enforcement**

### **19.1 Obligation to Comply with Governing Documents; Right to Enforce.**

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents and shall ensure that his or her guests and any visitors to the Unit also comply. Failure to comply shall be cause for:

(i) the Association or the Declarant to impose sanctions against the Owner, the occupant, and the Unit as authorized in this Declaration and the By-Laws;

(ii) the Declarant, the Association, or any Owner to take action in a court of law or equity to enforce the Governing Documents, subject to the dispute resolution procedures set forth in Article XVIII, if applicable.

(b) The Association may enforce applicable county and city ordinances and permit local governments to enforce their ordinances within the Community for the benefit of the Association and its Members.

(c) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. The Association shall not be obligated to take enforcement action if the Board reasonably determines that, under the circumstances of a particular case:

(i) the Association's legal position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other provision of the Governing Documents.

19.2. Association Remedies and Sanctions.

In addition to any remedies or sanctions specifically authorized elsewhere in the Governing Documents, the Association may seek or impose any of the following remedies and sanctions for violation of the Governing Documents:

(a) Assessment of reasonable monetary fines which shall constitute a lien upon the violator's Unit (in the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(b) suspension of the Owner's right to vote;

(c) suspension of any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any Assessment or other charge owed to the Association;

(d) upon the Owner's failure to take required action after written notice and a reasonable opportunity to do so, entering upon the Unit (which entry shall not be considered a trespass) and taking action to cure any condition or remove any thing or structure which is in violation of the Governing Documents and to restore the Unit to a complying condition, in which event the Association may charge all costs incurred against the Unit and the Owner as a Specific Assessment;

(e) precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Architectural Guidelines from continuing or performing any further activities in the Community (in which event the Association shall have no liability to any Person);

(f) levying Specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents; and

(g) recording a notice of violation in the Public Records.

19.3. Notice and Hearing Procedures.

Except as set forth in Section 19.3(c), prior to imposing any sanction for violation of the Governing Documents, taking any action to enforce the provisions of the Governing Documents, or exercising the rights granted to the Association under this Article, the Association shall comply with the notice and hearing procedures set forth in subsections (a) and (b) below.

(a) Notice. The Association shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the action which the Association proposes or intends to take, and (iii) a period of not less than 10 calendar days within which the alleged

violator may present a written request for a hearing. If a timely request for a hearing is not made within the 10-day period, the Association may proceed with the action or impose the sanction described in the notice. If the violation is abated within the 10-day period, the Association may, but shall not be obligated to, suspend the proposed action or sanction. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. Notwithstanding any suspension of proceedings hereunder, if the same or a similar violation is repeated within 12 months after the date of notice of the original violation, the Association may pursue any and all remedies described in the original notice without further notice to the alleged violator.

(b) Hearing. If a hearing is requested within the allotted 10-day period, the hearing shall be held before a committee appointed by the Board consisting of not less than five persons, all of whom shall be Owners or residents of the Community or representatives of the Declarant. A representative of the Association shall be afforded a reasonable opportunity to make a statement describing the alleged violation and to present any evidence or witnesses to support its statement. The alleged violator shall also be afforded a reasonable opportunity to be heard and to present any evidence or witnesses on his or her behalf. At the conclusion of all statements and presentations, the committee may close the hearing and retire to discuss the evidence and to render a judgment as to whether, in fact, a violation has occurred. The committee shall notify the Association and the alleged violator in writing of its determination within 5 days after the hearing. If the committee determines that a violation has occurred, the Association may pursue any and all remedies described in its original notice of the violation.

(c) Applicability. The notice and hearing procedures set forth in this Section 19.3 shall not apply to any claim which the Association is required or elects to submit to the dispute resolution procedures set forth in Article XVIII, nor to the exercise of self-help to cure violations after written notice to the Owner and an opportunity to cure pursuant to Section 19.2(d). Subject to the provisions of Article XVIII, as they may apply, the Association may also file suit in a court of law or equity to enforce the Governing Documents, to enjoin any violation, or to recover monetary damages for any violation without the necessity of complying with the notice and hearing procedures set forth above.

#### 19.4. Remedies Cumulative; Recovery of Costs.

(a) All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity.

(b) In any action to enforce the Governing Documents, if the party seeking to enforce prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

### **Article XX Miscellaneous Provisions**

#### 20.1. Binding Effect and Duration.

All of the property described in Exhibit "A" shall be held, sold, used, and conveyed subject to the terms of this Declaration which shall run with the title to such real property. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of



the Community, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Community.

Unless terminated by the Owners as provided below, this Declaration is intended to have perpetual duration. However, so long as Georgia law limits the period during which covenants may run with the land, any provision of this Declaration affected by such law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of 20 years, unless terminated in accordance with O.C.G.A. Section 44-5-60, as it may be amended, within the year proceeding any extension.

Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Section. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

If any provision of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision shall continue in effect only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

#### 20.2. Amendment.

Until conveyance of the first Unit by Declarant to a Person other than a successor Declarant, the Declarant may amend this Declaration without the approval of the Association or the Owners. Thereafter, as long as the Declarant owns any property in the Community or which may become part of the Community pursuant to Section 12.1, the Declarant may amend this Declaration without the approval of the Association or the Owners, if such amendment (i) is specifically required to enable any institutional or governmental entity to make, purchase, insure, or guarantee mortgage loans on the Units, or (ii) does not materially adversely affect the rights of any Owner under this Declaration without such Owner's consent.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners entitled to cast at least 75% of the total number of Class "A" votes in the Association and the consent of Declarant, so long as Declarant owns any property within the Community or which may become part of the Community pursuant to Section 12.1.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within three months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

20.3. Severability.

Invalidation by judgment or court order of any provision of this Declaration shall not affect the validity of other provisions of this Declaration. Invalidation of any provision as applied in a particular case shall not affect the validity of other applications of the same provision.

20.4. Cumulative Effect; Conflict.

The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Any Supplemental Declaration or other recorded instruments affecting title to any portion of the Community may contain provisions which are more restrictive than the provisions of this Declaration, and in such case, the more restrictive provision shall control. The Association shall have the standing and authority to enforce all such restrictions.

20.5. Notice of Sale or Transfer of Title.

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall be jointly and severally responsible with the Person to whom title is transferred for all obligations of the Owner of the Unit, including Assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

20.6. Exhibits.

Exhibits "A," "B," "C," "D", and "E" attached to this Declaration are incorporated by this reference. Amendments to Exhibits "A" and "B" shall be governed by the provisions of Section 20.2. Amendments to Exhibit "C" shall be governed by Article V. Exhibit "D," the By-Laws, is attached for informational purposes and may be amended as provided therein.

[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]

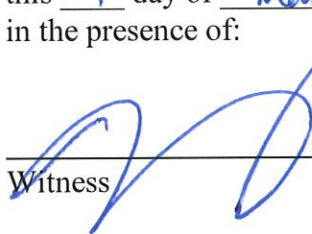
IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 1<sup>st</sup> day of May, 2019.


**DECLARANT:**      **KENSINGTON GATES, LLC**, a Georgia limited liability company

Its Manager:  
Atlanta Capital, LLC

By:  (SEAL)  
Christopher L. Harris, Manager

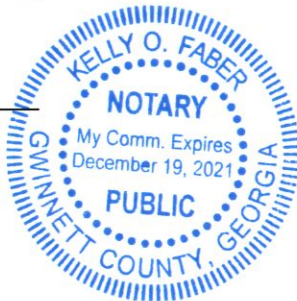
Signed, sealed, and delivered  
this 1 day of May, 2019  
in the presence of:

  
Witness

  
Notary Public

My commission expires: \_\_\_\_\_

[NOTARY PUBLIC SEAL AFFIXED]



**EXHIBIT "A"****Land Initially Submitted****PARCEL A:**

All that tract or parcel of land lying and being in Land Lot 320 of the 18<sup>th</sup> District of DeKalb County, Georgia and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at the intersection of the Land Lot Line common to Land Lots 320 and 312 and the easterly right of way of McElroy Road (60' R/W); thence leaving said intersection and traveling along said right of way of McElroy Road in a northwesterly direction along a curve to the right having a radius of 844.96 feet and an arc length of 102.46 feet, being subtended by a chord of North 21 degrees 56 minutes 32 seconds West for a distance of 102.40 feet to an iron pin set, said point being the TRUE POINT OF BEGINNING.

Thence from said point as thus established and continuing along the aforesaid easterly right of way of McElroy Road the following three (3) courses and distances, along a curve to the right having a radius of 844.96 feet and an arc length of 57.65 feet, being subtended by a chord of North 16 degrees 30 minutes 23 seconds West for a distance of 57.64 feet to a point; thence along a curve to a right having a radius of 2353.63 feet and an arc length of 156.22 feet, being subtended by a chord of North 12 degrees 27 minutes 16 seconds West for a distance of 156.19 feet to a point; thence North 10 degrees 09 minutes 24 seconds West for a distance of 126.99 feet to a point; thence leaving said right of way, North 81 degrees 53 minutes 01 seconds East a distance of 345.55 feet to a point; thence South 07 degrees 01 minutes 28 seconds East for a distance of 368.00 feet to an iron pin set; thence South 87 degrees 01 minutes 49 seconds West for a distance of 315.06 feet to an iron pin set on the aforesaid easterly right of way of McElroy Road, said point being the TRUE POINT OF BEGINNING.

Said Property contains 2.704 acres as shown on the Boundary Survey for Phillip Pressley, prepared by Precision Planning, Inc., dated October 15, 2007.

**PARCEL B:**

All that tract or parcel of land lying and being in Land Lot 320 of the 18<sup>th</sup> District of DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at an iron rod, which iron rod is found by beginning at the southeast corner of Land Lot 320 of the 18<sup>th</sup> District of DeKalb County, Georgia and running West along the south line of Land Lot 320 a distance of 1117.4 feet to an iron rod; thence running North 8 degrees 27 minutes 30 seconds West and along a fence of distance of 478 feet to the first mentioned iron rod, which is the TRUE BEGINNING POINT; running thence Northerly a distance of 151.7 feet to an iron pin; thence Westerly (South 80 degrees 19 minutes West) and along a fence a distance of 362.9 feet to an iron pin on the easterly side of McElroy Road; thence Southerly along the easterly side of McElroy Road a distance of 150.7 feet; thence Easterly a distance of 359.7 feet to an iron rod at the POINT OF BEGINNING.

**PARCEL C:**

All that tract or parcel of land lying and being in Land Lot 320, 18<sup>th</sup> District, DeKalb County, Georgia, being more particularly described as follows:

Beginning at an iron pin located at the intersection of the easterly side of McElroy Road with the line dividing Land Lots 320 and 312; running thence North 69 degrees 30 minutes 0 seconds East 300.3 feet to an iron pin; running thence North 7 degrees 39 minutes 56 seconds West 110 feet to an iron pin set; running thence South 35 degrees 31 minutes 47 seconds West 326.17 feet to an iron pin on the easterly side of McElroy Road; running thence along the easterly side of McElroy Road South 23 degrees 18 minutes 35 seconds East 100.11 feet to an iron pin and the point of beginning; according to survey prepared by Pearson & Associates, Inc., dated May 27, 1993; being the same property conveyed in deed recorded at Deed Book 7034, Page 11, DeKalb County, Georgia Records; being improved property known as 3775 McElroy Road according to the present system of numbering houses in DeKalb County, Georgia.

**EXHIBIT "B"**

**Land Which May be Submitted**

Any portion of the real property located within a one mile radius of the Community.

**EXHIBIT "C"****Initial Restrictions and Rules**

The following restrictions applicable to property within the Community shall remain in effect until such time as they are amended, modified, repealed, or limited by rules of the Association adopted pursuant to Article V of the Declaration.

1. **General.** The Community shall be used only for residential, recreational, and related purposes (which may include, without limitation, a sales office of Declarant) consistent with this Declaration.

2. **Restricted Activities.** The following activities are prohibited within the Community unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Undertaking any action, work, construction, or improvement that will likely impair the structural soundness or integrity of another Unit or impair any easement;

(b) Installing or maintaining any blinds, shades, decorative panels, window or door treatments or coverings for any doors or windows which are part of a Unit and visible from outside the Unit in a color other than white, off-white, or light beige;

(c) Installing any window air conditioning units in any Unit;

(d) Parking or storage of commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, or inoperable vehicles within the Community, except on a temporary basis for such period of time as is reasonably necessary to load, unload, or prepare such vehicles for immediate use or parking of any vehicle which does not have a valid license plate or which has been abandoned, wrecked, or dismantled within the Community for any period of time;

(e) Parking of any vehicle in areas of the Community other than i) the garage or driveway of a Unit which is owned, occupied, or being visited by the vehicle operator, except that persons other than Owners and residents of Units may park in designated visitor parking spaces, if any, subject to such rules as the Board may adopt; or ii) areas designated for vehicle parking by Declarant;

(f) Raising, breeding, or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted on a Unit; however, those pets which are permitted to roam freely outside the boundaries of the owner's Unit, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such

request, the Board may remove the pet, in addition to imposing such other sanctions as are authorized by the Declaration and By-Laws. Dog owners shall keep their dogs on a leash at all times when outside the boundaries of the Unit. Pets shall be registered, licensed, and inoculated as required by law;

(g) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;

(h) Any activity which violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(i) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(j) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(k) Outside burning of trash, leaves, debris, or other materials;

(l) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(m) Use and discharge of firecrackers and other fireworks;

(n) Dumping of garbage, petroleum products, or potentially hazardous or toxic substances in any street, storm sewer, or on Common Areas or other Units;

(o) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved sanitary containers;

(p) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;

(q) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and filed in the Public Records, except that Declarant shall be permitted to subdivide, combine, or replat Units which it owns;



(r) Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years;

(s) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(t) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;

(u) Use of a Unit's garage for storage or other purposes to an extent that precludes use of the garage for parking of a motor vehicle inside;

(v) Any business, trade, yard sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Community; (iii) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Community; and (iv) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

Leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or a Builder approved by Declarant with respect to its development and sale of the Community or its use of any Units which it owns within the Community; and

(w) Any construction, erection, or placement of any thing, permanently or temporarily, on the exterior portions of the Unit or on Common Area, except in strict compliance with the provisions of Article IV of the Declaration. If not addressed in the Architectural Guidelines, the Board or the ARC, in its discretion, may prohibit or permit such things as it deems appropriate, subject to applicable law and regulations.

3. Prohibited Activities and Conditions. The following shall be prohibited within the Community:

(a) Satellite dishes, antennas and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that (i) Declarant and the Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Community, and (ii) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) antennas or satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or (c) antennas or satellite dishes designed to receive television broadcast signals ("Permitted Devices") shall be permitted, *provided that* any such Permitted Device is placed in the least conspicuous location on the Unit in which an acceptable quality signal can be received and in a manner consistent with the Community-Wide Standard and the Architectural Guidelines. It shall not be necessary to obtain prior approval under Article IV of the Declaration to install a Permitted Device in a manner consistent with this paragraph (a);

(b) Laundry drying facilities including, but not limited to, clothes lines, outside of a Unit. In addition, the use of porch railings or any other part of the exterior of the Unit for drying or storing of clothes or other articles is prohibited or

(c) Any thing or condition which will result in the cancellation, or increase in premium, or reduction in coverage of insurance maintained by the Association or which would be in violation or any law or other applicable requirement of governmental authorities.

4. Leasing of Units. "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term. In addition, the Board may require inclusion of specific terms and conditions in the lease agreement. Any lease of a Unit shall provide that the tenant and all occupants of the leased Unit shall be bound by the terms of the Governing Documents. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Restrictions and Rules.

**EXHIBIT "D"**

**BY-LAWS**

**BY-LAWS**  
**OF**  
**KENSINGTON GATES TOWNHOME COMMUNITY ASSOCIATION, INC.**

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**BY-LAWS**  
**OF**  
**KENSINGTON GATES TOWNHOME COMMUNITY ASSOCIATION, INC.**

**Article I      Name, Principal Office, Definitions**

1.1.    Name.

The name of the corporation is Kensington Gates Townhome Community Association, Inc. (the "Association").

1.2.    Principal Office.

The principal office of the Association shall be located in Fulton County, Georgia. The Association may have such other offices, either within or outside the State of Georgia, as the Board of Directors may determine or as the affairs of the Association may require.

1.3.    Definitions.

The words used in these By-Laws shall be given their normal, commonly understood definitions, unless otherwise specified. In order to minimize repetition, some terms are capitalized to indicate that they have specific definitions as set forth in the Declaration of Covenants, Conditions, and Restrictions for Kensington Gates Townhomes (the "Declaration"), executed by Kensington Gates, LLC, a Georgia limited liability company, and recorded in the Public Records of DeKalb County, Georgia, as such Declaration may be amended.

**Article II      Membership and Meetings**

2.1.    Membership.

The Association initially shall have two classes of membership, Class "A" and Class "B," as described in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2.    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 the Board may designate, either within the Community or as convenient as possible and practical.

2.3.    Annual Meetings.

The first meeting of the Association membership, whether a regular or special meeting, shall be held within one year from the date of incorporation of the Association. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board.

#### 2.4. Special Meetings.

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 10% of the total Class "A" votes in the Association.

#### 2.5. Notice of Meetings.

Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President, the Secretary, or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when hand delivered or deposited in the United States mail addressed to the Member at the address of the Member's Unit or such other address as the Member may have designated in writing to the Association, with postage prepaid.

#### 2.6. Waiver of Notice.

Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

#### 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 may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is initially present may continue to do business until adjournment, notwithstanding the withdrawal of some Members leaving less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.



2.8. Voting.

The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.9. Proxies.

Members may vote in person or by proxy, subject to the limitations of Georgia law relating to use of proxies and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing and shall identify the Unit for which it is given. Proxies shall be signed by the Member or the Member's attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective.

Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast. In the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon conveyance of any Unit for which it was given, upon receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or one year from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. Majority.

As used in these By-Laws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

2.11. Quorum.

Except as otherwise provided in these By-Laws or in the Declaration, the presence of persons entitled to cast at least 25% of the total Class "A" votes in the Association shall be required to transact business at any meeting of the membership.

2.12. Conduct of Meetings.

The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13. Action Without a Meeting.

Unless otherwise prohibited by Georgia law, any action required or permitted by law to be taken at a meeting of the Members may be taken by written consent or by ballot cast by mail without a meeting, in accordance with the following procedure:

(a) The Secretary shall send written notice of the proposed action for which consent is requested to each Member entitled to vote thereon at least 10 days prior to the deadline for

returning the ballots or consents. The notice shall be accompanied by a ballot or consent form which:

- (i) describes the proposed action;
- (ii) provides a place to indicate, in the case of a ballot, how the Owner's vote is to be cast, or in the case of a consent, the Owner's approval or disapproval of, or consent to the proposed action;
- (iii) provides a method of identifying the Owner and the Unit for which the ballot is cast or consent is given, and in the case of a consent, a place for the Owner's signature; and
- (iv) indicates the address to which completed forms should be returned and the deadline for returning them, if any.

(b) The proposed action shall be deemed approved if ballots or consents approving the action are received from Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present, and such ballots or consents shall have the same force and effect as a vote of the Members at a meeting. The ballots or consents shall be filed with the minutes of the Association. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote fairly summarizing the material features of the authorized action.

### **Article III Board of Directors**

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

##### **3.1. Governing Body; Composition.**

The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by the Class "B" Member, the directors shall be Members. In the case of a Member which is not a natural person, any officer, director, partner, or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; however, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

##### **3.2. Number of Directors.**

The Board shall consist of three to seven directors, as provided in Sections 3.3 and 3.5 below. Notwithstanding the foregoing, the initial Board may consist of one director as identified in the Articles of Incorporation or otherwise, and may remain at one director during the Developer Control Period as defined below.

### 3.3. Directors During Developer Control Period.

Subject to the provisions of Section 3.5, the Declarant, as the Class "B" Member, shall be entitled to appoint, remove, and replace the directors in its sole discretion so long as the Class "B" Membership exists (the "Developer Control Period").

### 3.4. Nomination and Election Procedures.

(a) Nominations and Declarations of Candidacy. Prior to each election of directors, the Board shall announce the opening date and the closing date of a reasonable period in which any eligible person who has an interest in serving as a director may file as a candidate for any position for which he or she may be eligible. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient, and cost-effective manner.

Except with respect to directors selected by the Class "B" Member, nominations for election to the Board may also be made by a "Nominating Committee." The Nominating Committee, if any, shall consist of a chairman, who shall be a member of the Board, and three or more Members or representatives of Members. The Board shall appoint the members of the Nominating Committee, if one is to be appointed, not less than 30 days prior to the election, and such appointment shall be announced in the notice of each election.

The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates.

Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) Election Procedures. Each Member may cast all votes assigned to its Unit for each position on the Board of Directors to be filled by such election. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

### 3.5. Election and Term of Office.

Notwithstanding any other provision of these By-Laws:

Not later than 60 days after termination of the Developer Control Period, the Board shall increase to five directors and the President shall call for an election by which the Class "A" Members shall be entitled to elect all of the directors. The directors elected by the Class "A" Members shall serve until the first annual meeting following the termination of the Developer Control Period. If such annual meeting is scheduled to occur within 60 days after termination of the Developer Control Period, the Class "A" Members shall elect the five directors at the annual meeting. Three directors shall serve a term of two years and two directors shall serve a term of one year as such directors decide among themselves.

Upon the expiration of the term of office of each director elected by the Class "A" Members, such Members shall be entitled to elect a successor to serve a term of two years. The directors elected by the Members shall hold office until their respective successors have been elected.

3.6. Removal of Directors and Vacancies.

Any director elected by the Class "A" Members may be removed, with or without cause, by a two-thirds vote of the Class "A" Members present and entitled to vote at any meeting at which a quorum is present. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any Assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such directorship may elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Class "B" Member nor to any director serving as Declarant's representative. The Class "B" Member or Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by or elected as a representative of the Class "B" Member or Declarant.

B. Meetings.

3.7. Organizational Meetings.

The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place the Board shall fix.

3.8. Regular Meetings.

Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

Notice of the time and place of a regular meeting shall be communicated to directors not less than four days prior to the meeting; however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding the meeting.

3.9. Special Meetings.

Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two directors.

3.10. Notices; Waiver of Notice.

(a) Notices of meetings of the Board shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by:

(i) personal delivery;

(ii) first class mail, postage prepaid;

(iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or

(iv) facsimile, computer, or other electronic communication device, with confirmation of transmission.

All such notices shall be given at the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the records of the Association. Notices of special meetings of the Board shall also be posted in a prominent place within the Community. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) The transactions of any meeting of the Board, 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 (i) a quorum is present, and (ii) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11. Telephonic Participation in Meetings.

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other.

Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

### 3.12. Quorum of Board of Directors.

At all meetings of the Board, the presence of a majority of the directors shall be necessary to establish 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, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

### 3.13. Compensation.

Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association and by the Class "B" Member at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. The Association may compensate a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

### 3.14. Conduct of Meetings.

The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

### 3.15. Open Meetings.

Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members, but attendees other than directors may not participate in any discussion or deliberation unless permission to speak is requested on their behalf by a director. In such case, the President may limit the time any such individual may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

### 3.16. Action Without a Formal Meeting.

Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a written consent, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

## C. Powers and Duties.

### 3.17. Powers.

The Board of Directors shall have all of the powers necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done, without a vote of the membership, all acts and things except those as to which the Governing Documents or Georgia law require a vote of the membership.

### 3.18. Duties.

The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary to exercise the authority and carry out the responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association provided that any reserve funds may be deposited, in the directors' best business judgment, in depositories other than banks;
- (f) making and amending Restrictions and Rules in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the Association and designating the persons authorized to sign on such accounts;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules adopted by it;

(j) bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association, subject to the provisions of Article XVII of the Declaration;

(k) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(l) paying the cost of all services rendered to the Association;

(m) keeping books with detailed accounts of the receipts and expenditures of the Association;

(n) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules and all other books, records, and financial statements of the Association as provided in Section 6.4;

(o) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Community;

(p) indemnifying a director, officer, or committee member, or former director, officer, or committee member of the Association to the extent full extent such indemnity is permitted by Georgia law, or the Articles of Incorporation; and

(q) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

### 3.19. Right of Declarant to Disapprove Actions.

So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of the Declarant under the Declaration or these By-Laws, or interfere with the development, construction, marketing, or sale of Declarant's unsold Units in any portion of the Community, or diminish the level of services being provided by the Association.

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board, or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address which the Class "B" Member has registered with the Secretary of the Association, which notice complies with Section 3.10 and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting; and



(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy, or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

The Class "B" Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer, director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board, or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

### 3.20. Management.

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary for the manager to assist the Board in performing its duties under Section 3.18, but shall not delegate policy-making authority or ultimate responsibility of the Association. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager.

The Board of Directors may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

### 3.21. Accounts and Reports.

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; however, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement.

### 3.22. Borrowing.

The Association shall have the power to borrow money for any legal purpose provided that the Board shall obtain approval of Members entitled to cast at least a majority of the votes cast at a duly called and held meeting of the Members at which a quorum is represented, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 25% of the budgeted gross expenses of the Association for that fiscal year. During the Developer Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any

combination thereof, of Members representing at least 67% of the total Class "A" votes in the Association.

3.23. Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions.

**Article IV    Officers**

4.1. Officers.

The officers of the Association shall be a President, Secretary, and Treasurer. The President and Secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office.

The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

4.3. Removal and Vacancies.

The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties.

The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. Resignation.

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

4.6. Agreements, Contracts, Deeds, Leases, Checks.

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7. Compensation.

Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.13.

**Article V     Committees**

5.1. General.

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Architectural Review Committee.

The Board shall appoint an architectural review committee upon delegation or termination of the Declarant's authority over architectural matters pursuant to Article IV of the Declaration. Such committee shall operate in accordance with the terms of such Article IV and resolutions of the Board of Directors.

**Article VI     Miscellaneous**

6.1. Fiscal Year.

The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3. Conflicts.

If there are conflicts between the provisions of Georgia law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Georgia law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and

for a purpose reasonably related to his or her interest in a Unit: the Declaration, By-Laws, and Articles of Incorporation, including any amendments, the rules of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Community as the Board shall designate.

(b) Rules for Inspection. The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

#### 6.5. Notices.

Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member 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 Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

#### 6.6. Amendment.

(a) By Class "B" Member. Prior to the conveyance of the first Unit by Declarant to a Person other than a successor Declarant, the Class "B" Member may unilaterally amend these By-Laws. Thereafter, the Class "B" Member may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Class "B" membership exists, the

Class "B" Member may unilaterally amend these By-Laws for any other purpose, provided that the amendment has no material adverse effect upon any right of any Member.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of persons entitled to cast 67% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. In addition, the approval requirements set forth in Article XVI of the Declaration shall be met, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, respectively (or the assignee of such right or privilege).

(c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within three months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.


**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Kensington Gates Townhome Community Association, Inc., a Georgia nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of such Association, as duly adopted by unanimous written consent in lieu of a meeting of the Board of Directors thereof held on the 1 day of May 2019.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 1 day of May, 2019.

  
\_\_\_\_\_[SEAL]  
Christopher L. Harris, Secretary

**EXHIBIT "E"**

**Form of Resignation of Declarant**

Prepared by:  
Mahaffey Pickens Tucker, LLP  
1550 North Brown Road, Suite 125  
Lawrenceville, Georgia 30043

NOTE TO CLERK:  
PLEASE CROSS REFERENCE TO:  
DEED BOOK \_\_\_\_\_, PAGE \_\_\_\_  
DEKALB COUNTY, GEORGIA RECORDS

**STATE OF GEORGIA  
COUNTY OF DEKALB**

**RESIGNATION OF DECLARANT**

THIS RESIGNATION OF DECLARANT is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between KENSINGTON GATES, LLC, a Georgia limited liability company ("Declarant") and KENSINGTON GATES TOWNHOME COMMUNITY ASSOCIATION, INC. ("Association").

**WITNESSETH:**

WHEREAS, on \_\_\_\_\_, Declarant executed and recorded that certain Declaration of Covenants, Conditions and Restrictions for Kensington Gates Townhomes recorded \_\_\_\_\_, 20\_\_\_, Deed Book \_\_\_\_\_, Page \_\_, DeKalb County, Georgia Records, as amended from time to time, (as amended, "Declaration"); and



WHEREAS, pursuant to Part One, Article II of the Declaration, "Declarant" means Kensington Gates, LLC, or any successor, successor-in-title, or assign who takes title to any portion of the property in the Community for the purpose of development and/or resale and who is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant; and

WHEREAS, pursuant to Part One, Article II of the Declaration, the Developer Control Period is defined as the "period of time during which the Declarant, by virtue of its Class "B" membership, is entitled to appoint a majority of the members of the Board of Directors pursuant to the By-Laws; and

WHEREAS, pursuant to Part Three, Article VI of the Declaration, the Class "B" membership shall terminate upon the earlier of (i) the date which 100% of the Permitted Units have been improved with a dwelling approved for occupancy and have been conveyed to Class "A" Members, (ii) December 31, 2033, or (iii) the date upon which the Declarant voluntarily terminates such membership by written notice recording in the Public Records; and

WHEREAS, as of \_\_\_\_\_, one of more of the conditions for termination of the Class "B" membership has occurred; and

WHEREAS, the Class "B" membership has now terminated and the Developer Control Period has expired; and

WHEREAS, the Declarant and the Association desire to record this Declarant's Resignation to memorialize the termination of the Developer Control Period, memorialize the termination of the Class "B" membership pursuant to the Declaration and the By-Laws of the Association, and release each other from future liability.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in accordance with the provisions of the Declaration,

1. Declarant and Association acknowledge and agree that the \_\_\_\_\_  
(insert condition causing termination of Class B  
Membership) \_\_\_\_\_ (as that term is defined in the Declaration) and  
that the Class "B" membership has terminated.

2. Association does hereby fully, irrevocably and unconditionally remise, release and forever discharge Declarant and, as applicable, Declarant's successors, assigns, beneficiaries, legal representatives, members, shareholders, directors, managers, officers, employees, agents, and advisors of and from any and all obligations, debts, demands, actions, causes of action, manners of action, suits, accounts, dues, covenants, contracts, agreements, judgments, controversies, damages and any and all claims, demands and liabilities whatsoever, both in law and at equity, known or unknown, that Association has as of the date hereof, may ever have had prior to the date hereof or may have hereafter against Declarant arising out of or relating to any act, omission or agreement of Declarant prior to the date hereof.

[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Assignment and affixed the corporate seal effective as of the \_\_\_ day of \_\_\_\_\_, 20\_\_.

**KENSINGTON GATES, LLC,**  
**a Georgia limited liability company**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signed, sealed, and delivered  
this \_\_\_ day of \_\_\_\_\_,  
20 \_\_, in the presence of:

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

[AFFIX NOTARY SEAL]

[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]

**KENSINGTON GATES TOWNHOME  
COMMUNITY ASSOCIATION, INC., a Georgia  
non-profit corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signed, sealed, and delivered  
this \_\_ day of \_\_\_\_\_,  
20 \_\_, in the presence of:

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

[AFFIX NOTARY SEAL]