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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
ASHBURY

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

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- TABLE OF CONTENTS -

	<u>Page Number</u>
<b>ARTICLE 1 <u>DEFINITIONS</u></b> .....	<b>2</b>
1.1 " <u>ARTICLES OF INCORPORATION</u> " .....	2
1.2 " <u>ASSOCIATION</u> " .....	2
1.3 " <u>BOARD OF DIRECTORS</u> " OR " <u>BOARD</u> " .....	2
1.4 " <u>BYLAWS</u> " .....	2
1.5 " <u>COMMON PROPERTY</u> " .....	2
1.6 " <u>COMMUNITY</u> " .....	2
1.7 " <u>COMMUNITY-WIDE STANDARD</u> " .....	2
1.8 " <u>CND</u> " .....	2
1.9 " <u>DECLARANT</u> " .....	2
1.10 " <u>GATE SYSTEM</u> " .....	3
1.11 " <u>LIMITED COMMON PROPERTY</u> " .....	3
1.12 " <u>MORTGAGE</u> " .....	3
1.13 " <u>MORTGAGEE</u> " .....	3
1.14 " <u>OCCUPANT</u> " .....	3
1.15 " <u>OWNER</u> " .....	3
1.16 " <u>PERSON</u> " .....	3
1.17 " <u>SUPPLEMENTARY DECLARATION</u> " .....	3
1.18 " <u>TOTAL ASSOCIATION VOTE</u> " .....	3
1.19 " <u>UNIT</u> " .....	4
<b>ARTICLE 2 <u>PROPERTY SUBJECT TO THIS DECLARATION</u></b> .....	<b>4</b>
2.1 <u>PROPERTY HEREBY SUBJECTED TO THIS DECLARATION</u> .....	4
2.2 <u>UNILATERAL ANNEXATION BY DECLARANT</u> .....	4
2.3 <u>ANNEXATION BY ASSOCIATION</u> .....	5
2.4 <u>WITHDRAWAL OF PROPERTY</u> .....	5
<b>ARTICLE 3 <u>ASSOCIATION MEMBERSHIP AND VOTING RIGHTS</u></b> .....	<b>5</b>
3.1 <u>MEMBERSHIP</u> .....	5
3.2 <u>VOTING</u> .....	6
<b>ARTICLE 4 <u>ASSESSMENTS</u></b> .....	<b>6</b>
4.1 <u>PURPOSE OF ASSESSMENTS</u> .....	6
4.2 <u>CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS</u> .....	6
4.3 <u>BUDGET</u> .....	7
4.4 <u>GENERAL ASSESSMENTS</u> .....	7
4.5 <u>SPECIAL ASSESSMENTS</u> .....	8
4.6 <u>SPECIFIC ASSESSMENTS</u> .....	8
4.7 <u>SUBORDINATION OF LIENS TO MORTGAGES</u> .....	8
4.8 <u>REMEDIES OF THE ASSOCIATION</u> .....	9
4.9 <u>DATE OF COMMENCEMENT OF ASSESSMENTS</u> .....	10

4.10	<u>BUDGET DEFICITS DURING DECLARANT CONTROL</u> .....	10
4.11	<u>FAILURE TO ASSESS</u> .....	10
4.12	<u>ESTOPPEL LETTER</u> .....	10
4.13	<u>WORKING CAPITAL CONTRIBUTION</u> .....	11
4.14	<u>SUSPENSION OF SERVICES PROVIDED BY ASSOCIATION</u> .....	11
	<b>ARTICLE 5 <u>MAINTENANCE; COMMON PROPERTY</u></b> .....	<b>12</b>
5.1	<u>ASSOCIATION'S MAINTENANCE RESPONSIBILITY</u> .....	12
5.2	<u>EXTERIOR UNIT MAINTENANCE</u> .....	13
5.3	<u>LANDSCAPING MAINTENANCE</u> .....	14
5.4	<u>PARTY WALLS</u> .....	15
5.5	<u>FAILURE TO MAINTAIN</u> .....	16
5.6	<u>CONVEYANCE OF COMMON PROPERTY BY DECLARANT TO ASSOCIATION: NO IMPLIED RIGHTS</u> .....	16
5.7	<u>PARTITION</u> .....	17
5.8	<u>CONDEMNATION</u> .....	17
5.9	<u>LIMITATION OF LIABILITY</u> .....	17
5.10	<u>MEASURES RELATED TO INSURANCE COVERAGE</u> .....	18
5.11	<u>GARBAGE PICK-UP AND RECYCLING</u> .....	18
5.12	<u>FIRE SPRINKLER SYSTEMS</u> .....	19
5.13	<u>GATE SYSTEM</u> .....	20
5.14	<u>LIMITED COMMON PROPERTY</u> .....	21
	<b>ARTICLE 6 <u>ARCHITECTURAL STANDARDS</u></b> .....	<b>22</b>
6.1	<u>GENERAL</u> .....	22
6.2	<u>GUIDELINES AND PROCEDURES</u> .....	22
6.3	<u>ARCHITECTURAL GUIDELINES</u> .....	23
6.4	<u>LIMITATION OF LIABILITY</u> .....	23
6.5	<u>NO WAIVER</u> .....	23
6.6	<u>VARIANCES</u> .....	24
6.7	<u>ENFORCEMENT</u> .....	24
6.8	<u>ARCHITECTURAL REVIEW BY DECLARANT</u> .....	24
	<b>ARTICLE 7 <u>USE RESTRICTIONS AND RULES</u></b> .....	<b>25</b>
7.1	<u>RULES AND REGULATIONS</u> .....	25
7.2	<u>RESIDENTIAL USE</u> .....	25
7.3	<u>SIGNS</u> .....	26
7.4	<u>VEHICLES; PARKING</u> .....	27
7.5	<u>ANIMALS AND PETS</u> .....	28
7.6	<u>NUISANCE</u> .....	29
7.7	<u>UNSIGHTLY OR UNKEMPT CONDITIONS</u> .....	30
7.8	<u>ANTENNAE</u> .....	30
7.9	<u>FIREARMS</u> .....	30
7.10	<u>FENCES</u> .....	30
7.11	<u>AIR-CONDITIONING UNITS</u> .....	30
7.12	<u>LIGHTING AND DISPLAYS</u> .....	30
7.13	<u>ARTIFICIAL VEGETATION, GARDENS, PLAY EQUIPMENT, EXTERIOR SCULPTURE, WATER FEATURES AND SIMILAR ITEMS</u> .....	31
7.14	<u>FLAGS</u> .....	31
7.15	<u>CONSERVATION EQUIPMENT</u> .....	31
7.16	<u>CLOTHESLINES</u> .....	31
7.17	<u>WINDOW TREATMENTS</u> .....	31
7.18	<u>STORM AND SCREEN DOORS AND WINDOWS; PET DOORS</u> .....	32
7.19	<u>DRAINAGE</u> .....	32
7.20	<u>GARBAGE CANS, FIREWOOD, ETC.</u> .....	32
7.21	<u>SUBDIVISION OF UNIT</u> .....	32
7.22	<u>HEATING OF UNITS IN COLDER MONTHS</u> .....	32

7.23 GARAGE SALES ..... 33  
7.24 TRAFFIC REGULATIONS ..... 33  
7.25 OUTBUILDINGS AND SIMILAR STRUCTURES ..... 33  
7.26 DECKS, PATIOS, PORCHES OR BALCONIES ..... 33  
7.27 EXTERIOR DRAPERY ..... 34  
7.28 IMPAIRMENT OF UNITS AND EASEMENTS ..... 34  
7.29 ABANDONED PERSONAL PROPERTY ..... 34  
**ARTICLE 8 RESTRICTION ON LEASING** ..... **34**  
8.1 GENERAL ..... 34  
8.2 LEASING PERMITS ..... 35  
8.3 HARDSHIP LEASING PERMITS ..... 35  
8.4 TRANSIENT RENTALS ..... 36  
8.5 LEASING PROVISIONS ..... 36  
8.6 MORTGAGEE EXEMPTION ..... 37  
**ARTICLE 9 INSURANCE AND CASUALTY LOSSES** ..... **38**  
9.1 INSURANCE OBTAINED BY ASSOCIATION ..... 38  
9.2 INSURANCE OBTAINED BY UNIT OWNERS ..... 38  
9.3 DAMAGE AND DESTRUCTION ..... 39  
9.4 INSURANCE DEDUCTIBLE ..... 39  
**ARTICLE 10 EASEMENTS** ..... **40**  
10.1 GENERAL ..... 40  
10.2 EASEMENTS FOR USE AND ENJOYMENT ..... 40  
10.3 EASEMENTS FOR ENCROACHMENT AND OVERHANG ..... 41  
10.4 EASEMENT FOR UTILITIES – ASSOCIATION AND DECLARANT ..... 41  
10.5 EASEMENT FOR UTILITIES - UNIT OWNER ..... 42  
10.6 EASEMENT FOR EMERGENCY ENTRY ..... 42  
10.7 EASEMENT FOR ASSOCIATION MAINTENANCE ..... 42  
10.8 EASEMENT FOR UNIT MAINTENANCE ..... 43  
10.9 EASEMENT FOR DRAINAGE ..... 43  
10.10 EASEMENT DURING CONSTRUCTION AND SALE PERIOD ..... 43  
10.11 EASEMENT FOR PRIVATE STREETS, ALLEYS AND SIDEWALKS ..... 44  
**ARTICLE 11 GENERAL PROVISIONS** ..... **45**  
11.1 ENFORCEMENT ..... 45  
11.2 DURATION ..... 45  
11.3 OCCUPANTS BOUND ..... 46  
11.4 SELF-HELP ..... 46  
11.5 TERMINATION OF RIGHTS OF DECLARANT ..... 46  
11.6 RIGHTS RESERVED FOR THE BENEFIT OF CND ..... 46  
11.7 AMENDMENT ..... 47  
11.8 GENDER AND GRAMMAR ..... 48  
11.9 SEVERABILITY ..... 48  
11.10 CAPTIONS ..... 48  
11.11 NO MERGER ..... 48  
11.12 PREPARER ..... 48  
11.13 NOTICES ..... 48  
11.14 NO DISCRIMINATION ..... 49  
11.15 SECURITY ..... 49  
11.16 INDEMNIFICATION ..... 49  
11.17 AGREEMENTS ..... 50  
11.18 VARIANCES ..... 50  
11.19 NOTICE OF SALE, LEASE OR ACQUISITION ..... 50  
11.20 CUMULATIVE EFFECT: CONFLICT ..... 50

11.21 DISCLOSURES.....	50
<b>ARTICLE 12 DISPUTE RESOLUTION AND LIMITATION ON LITIGATION .....</b>	<b>51</b>
12.1 AGREEMENT TO ENCOURAGE RESOLUTION OF DISPUTES WITHOUT LITIGATION .....	51
12.2 DISPUTE RESOLUTION PROCEDURES.....	53
12.3 INITIATION OF PROCEEDINGS BY ASSOCIATION .....	55
12.4 DISPUTES BETWEEN OWNERS.....	55
12.5 CONTRACTOR DISPUTES DISCLOSURE .....	55

EXHIBIT "A" - PROPERTY DESCRIPTION

EXHIBIT "B" - ADDITIONAL PROPERTY WHICH MAY BE UNILATERALLY SUBMITTED TO THIS  
DECLARATION BY DECLARANT

EXHIBIT "C" - BYLAWS OF ASHBURY TOWNHOME ASSOCIATION, INC.

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
ASHBURY

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ASHBURY ("Declaration") is made on the date hereinafter set forth by **WEEKLEY HOMES, LLC**, a Delaware limited liability company (hereinafter sometimes called "Declarant") and **CND-LOWE LANE, LLC**, a Georgia limited liability company (hereinafter called "CND");

W I T N E S S E T H

WHEREAS, CND is the owner of the real property described in Exhibit "A" hereof; and

WHEREAS, Declarant intends to purchase from CND all of the Units in the Community, as such terms are more particularly defined in Article 1 hereof; and

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

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

Article 1  
Definitions

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

1.1 "Articles of Incorporation" means the Articles of Incorporation of Ashbury Townhome Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference, as the same may be amended from time to time.

1.2 "Association" means Ashbury Townhome Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

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

1.4 "Bylaws" means the Bylaws of Ashbury Townhome Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference, as the same may be amended from time to time.

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

1.6 "Community" refers to that certain real property described in Exhibit "A", attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein.

1.7 "Community-Wide Standard" means the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors and may be articulated in the Architectural Guidelines, as set forth in Section 6.3 hereof, but must be consistent with the Community-Wide Standard initially established by the Declarant.

1.8 "CND" means CND-Lowe Lane, LLC, a Georgia limited liability company, its successors and assigns.

1.9 "Declarant" means **WEEKLEY HOMES, LLC**, a Delaware limited liability company, and its successor, successor-in-title or assigns taking title to any portion of the property described in Exhibit "A" or Exhibit "B" hereof for the purpose of development and/or sale and designated as Declarant in a recorded instrument by the then holder of the rights of Declarant hereunder. Any or all of the rights of Declarant set forth in this Declaration, the Articles of Incorporation or the Bylaws may be transferred or assigned in whole or in part to other Persons, provided that the transfer or assignment shall not reduce an obligation nor enlarge

a right beyond that which the Declarant has under this Declaration, the Articles of Incorporation or the Bylaws. No transfer or assignment of the rights of Declarant provided for herein shall be effective unless it is in a written instrument signed by Declarant and, so long as CND owns a Unit, CND, and recorded in the public real estate records of Fulton County, Georgia. So long as CND owns a Unit, any assignment of the rights of Declarant without the consent of CND shall be deemed void and of no force and effect.

1.10 "Gate System" means the mechanical gate system located at the entrance of the Community which limits and/or restricts vehicular access, ingress and egress to and from the Community.

1.11 "Limited Common Property" means a portion of the Community whether owned by Declarant or conveyed to the Association as Common Property, reserved for the exclusive benefit and use of a particular Unit as provided in Section 5.14 hereof.

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

1.13 "Mortgagee" means the holder of a Mortgage.

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

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

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

1.17 "Supplementary Declaration" means a supplement to this Declaration which subjects additional property to the provisions of this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.

1.18 "Total Association Vote" means the votes attributable to the entire membership of the Association (including votes of Declarant) as of the record date for such action, but specifically excluding the votes of any Owners whose voting rights have been suspended as provided herein, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. If, for example, and without limitation, two-thirds (2/3) of the Total Association Vote is required to approve a matter, such matter must receive more than two-thirds (2/3) of the votes attributable to all existing members of the Association as of the record date for such action (and excluding the votes of any Owners whose voting rights have been

suspended as provided herein), whether or not such members are present or represented at the meeting, if any, where such votes are to be cast.

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

## Article 2

### Property Subject To This Declaration

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

2.2 Unilateral Annexation By Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, the Declarant shall have the unilateral right, privilege, and option from time to time at any time to subject all or any portion of the real property described in Exhibit "B" attached hereto and by this reference incorporated herein, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected. Any annexation shall be effective upon the filing for record of a Supplementary Declaration unless a later effective date is provided therein. Notwithstanding anything to the contrary herein, any Supplementary Declaration executed by Declarant shall also require the written consent of CND so long as it owns a Unit, which consent shall not be unreasonably withheld, conditioned or delayed. So long as CND owns a Unit, any Supplementary Declaration which is not executed by CND shall be void and of no force and effect. Inclusion of property on Declarant's land plan or in Exhibit "B" shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land plan bar Declarant from subjecting such property to the Declaration. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as the rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to

reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, regardless of whether such uses are consistent with the covenants and restrictions imposed herein.

2.3 Annexation by Association. Upon the written consent of: (a) the owner(s) thereof; (b) the Declarant; (c) CND, so long as CND owns any Unit; and (d) the Owners of at least two-thirds (2/3) of the Units, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Fulton County, Georgia land records a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon the filing for record of such Supplementary Declaration in the Fulton County, Georgia land records, unless a later effective date is provided therein.

2.4 Withdrawal of Property. Declarant shall have the right to amend this Declaration to remove any portion of the Community then owned by Declarant or the Association from the coverage of this Declaration and the jurisdiction of the Association, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community. Any withdrawal shall be accomplished by the filing for record of an amendment to this Declaration which describes the property to be removed and is executed by the Declarant and the Owner(s) of the property being removed if not the Declarant. Any withdrawal shall be effective upon filing for record of such amendment in the Fulton County, Georgia land records, unless a later effective date is provided therein. Such amendment shall be executed by: (a) the Declarant; (b) and the Owner(s) of the property being removed; and (c) CND, so long as it owns a Unit in the Community, which consent shall not be unreasonably withheld, conditioned or delayed, and shall not require the vote or consent of any other Unit Owners in the Community. So long as CND owns a Unit in the Community, any amendment to withdraw property from the Declaration which is not executed by CND shall be void and of no force and effect.

### Article 3

#### Association Membership and Voting Rights

3.1 Membership. Every Person who is the record owner of a fee or undivided fee interest in a Unit that is subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate an Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Unit. Membership shall be appurtenant to and may not be separated from ownership of a Unit. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the spouse of a member, but in no event shall more than one

(1) Person representing a single membership hold office at the same time. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this Section shall restrict the number of votes cast or the number of officers and directors appointed by the Declarant as provided in the Bylaws.

3.2 Voting. Members shall be entitled to cast one vote for each Unit owned. When more than one Person holds an ownership interest in a Unit, the vote for such Unit shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or referendum. The vote attributable to a Unit shall be suspended in the event more than one Person seeks to exercise it. The Board of Directors may suspend the voting rights of an Owner for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, rules and regulations, use restrictions or Architectural Guidelines.

#### Article 4 Assessments

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

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

The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each assessment, together with late charges, interest and costs of collection, including, without limitation, reasonable attorneys' fees actually incurred, shall also be the personal obligation of the Person who was the Owner of the Unit at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Unit, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of

the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise be exempt from liability for the assessments provided for herein for any reason, including, by way of illustration and not limitation, the following: (a) abandonment of the Unit; (b) nonuse of the Common Property, including, without limitation, the Community recreational facilities; (c) the Association's failure to perform its obligations required under the Declaration; or (d) inconvenience or discomfort arising out of the Association's performance of its duties. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

4.3 Budget. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. The Board shall cause the budget and the general assessment to be levied against each Unit for the year to be delivered to each member at least thirty (30) days prior to the due date of such general assessment. The budget and the general assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and the Declarant; provided, however, the Board shall have no obligation to call such a meeting unless a petition for a special meeting is presented to the Board within ten (10) days of the delivery of the notice of the general assessment. Notwithstanding the foregoing, in the event the membership and Declarant disapprove the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget has been determined, as provided herein, the budget in effect shall continue.

4.4 General Assessments. General assessments shall be levied equally on all similarly situated Units and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the general assessment shall be paid in one annual installment. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, improvements to the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, the following: (a) sums for property taxes for the Common Property; (b) insurance premiums; (c) legal and accounting fees; (d) management fees; (e) charges for utilities and other services provided by the Association; (f) costs to maintain landscaping in the Community; (g) costs to maintain the Community entry features, including any electricity, landscaping and irrigation expenses associated therewith; (h) costs to maintain the Gate System; (i) costs associated with the maintenance of the storm water drainage facilities serving the Community; (j) costs incurred to maintain the private Community streets, alleys, parking spaces, sidewalks and street lights; (k) costs to maintain the centralized mailbox area and mailboxes located thereon; (l) costs to perform certain exterior maintenance to Units; (m) costs to maintain the Community recreational facilities; (n) costs to maintain retaining walls located in the Community; and (o) expenses and liabilities incurred as provided herein, the Articles of Incorporation and Bylaws for the indemnification of officers and directors and in

connection with the enforcement of rights and duties of the Association against Owners and others.

4.5 Special Assessments. The Association, acting through the Board of Directors, may levy a special assessment against all Owners in the Community for any unbudgeted or unanticipated expenses or expenses in excess of those budgeted. So long as the total amount of special assessments allocated to each Unit does not exceed the amount of the annual general assessment in any one fiscal year, the Board may impose the special assessment without a vote of the Owners. Except for special assessments levied pursuant to Section 9.3 hereof, any special assessment which would cause the total amount of the special assessments allocated to any one Unit in a single fiscal year to exceed the amount of the annual general assessment must be approved by two-thirds (2/3) of the Total Association Vote and the Declarant in order to be effective. Special assessments shall be paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.6 Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. The failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. By way of explanation and not limitation, the following shall constitute specific assessments: (a) fines levied pursuant to this Declaration; (b) the working capital contribution as provided in Section 4.13 hereof; (c) the cost of maintenance performed by the Association for which an Owner is responsible; and (d) the costs of providing utilities or services to the Unit.

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

4.7 Subordination of Liens to Mortgages. Notwithstanding anything to the contrary in this Declaration or any other document related thereto or executed in connection therewith, the lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage placed on a Unit, if, but only if, all assessments and charges with respect to such Unit authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the foreclosure of such Mortgage. Such subordination is merely a subordination and shall not relieve an Owner of the personal obligation to pay all assessments

coming due during such period of ownership; shall not relieve such Unit from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's transferee by foreclosure); and no sale or transfer of such Unit to the Mortgagee or to any other Person pursuant to a foreclosure, or pursuant to any other proceeding in lieu of foreclosure, shall relieve any existing or previous Owner of such Unit of any personal obligation or relieve such Unit or any Owner of such Unit from liability for any assessment authorized hereunder that becomes due after such sale and transfer.

4.8 Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge (in an amount equal to the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the assessment or installment not paid when due), interest (at a rate of ten percent (10%) per annum on the principal amount due) and costs of collection, including, without limitation, reasonable attorneys' fees actually incurred. As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of assessments and fees arising hereunder shall include the costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2). The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a claim of lien with the Office of the Clerk of Superior Court of Fulton County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments.

Each Owner, by acceptance of a deed, vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Unit at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of use and enjoyment in and to the Common Property, including, without limitation, the right to use and enjoy the Community recreational facilities and the right to receive and enjoy such services and other benefits as may then be provided by the Association, which may include, without limitation, the deactivation of any card access system, gate code, or other method used in connection with the Gate System that restricts access to the Community. Any suspension of any utilities or services provided by the Association as set forth in Section

4.14 hereof shall not affect Owner's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such Unit in favor of the Association.

4.9 Date of Commencement of Assessments. Assessments shall commence when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a Unit on the date that the Unit is first occupied for residential purposes. A Unit shall be deemed to be occupied for residential purposes when it has been improved with a dwelling for which a certificate of occupancy has been issued and has been conveyed to an owner who intends to occupy the dwelling, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy. Any Unit which has been approved by Declarant for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant or any other Person, so long as such Unit is approved for use as a model home and is not occupied for residential purposes.

4.10 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint and remove the directors and officers of the Association, Declarant may, but shall have no obligation to: (a) advance funds or contributions of services or materials or a combination of services and materials, rather than money (herein collectively called "in kind contribution"), or a combination of these, to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the general, special and specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Community; provided, however, no Mortgage secured by the Common Property or any of the structures or improvements maintained by the Association shall be given in connection with such loan.

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

4.12 Estoppel Letter. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association or its managing agent setting forth the amount of assessments past due and unpaid, including any late charges, interest, fines, or other charges against that Unit. Such request shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. The Association shall, within five (5) business days after receiving a written request therefor, certify to the amount of any unpaid assessments constituting a lien on a specified Unit. The Association may

charge a reasonable fee as may be permitted by law as a prerequisite to the issuance of such statement. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Unit shall be binding upon the Association. It is the intent of this provision to comply with O.C.G.A. Section 44-14-15(c), as amended.

4.13 Working Capital Contribution. Upon each and every transfer or conveyance of title to a Unit after it has been improved with a dwelling for which a certificate of occupancy has been issued, a working capital contribution, in an amount determined by the Board from time to time, shall be collected from the new Owner at the closing of such transaction and disbursed to the Association; or if not collected at closing, shall be paid immediately upon demand to the Association. The working capital contribution shall constitute a specific assessment against the Unit, shall be in addition to, not in lieu of, the general assessment and shall not be considered an advance payment of such assessment. The working capital contribution may be used by the Association for any purpose which provides a direct benefit to the Community, including, without limitation, for the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions of this Declaration. Notwithstanding the foregoing, the working capital contribution shall not apply to the holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, but shall apply to the Owner acquiring title to the Unit from the foreclosing Mortgagee.

4.14 Suspension of Services Provided by Association. In the event any assessment, fine or other charge or portion or installment thereof is delinquent for sixty (60) days or more, in addition to all other rights provided in this Declaration, the Association shall have the right, upon ten (10) days written notice, to suspend any utility or service, the cost of which is paid for by the Association as a common expense until such time as the delinquent assessments and all costs permitted under this Section, including, without limitation, reasonable attorney's fees actually incurred and any reasonable utility provider charges or other reasonable costs incurred in suspending and/or restoring such services, are paid in full. Said utility services shall not be required to be restored until such delinquent assessments and costs, including, without limitation, any reasonable utility provider charges or other reasonable costs incurred in suspending and/or restoring such services, are paid in full. An Owner whose utility or service has been suspended shall not be entitled to use any such utility or service paid for as a common expense from any source. All Association expenses for terminating and/or restoring any services pursuant to this Section, including reasonable attorneys' fees actually incurred, shall be an assessment and a lien against the Unit and shall be collected as provided herein for the collection of assessments. The notice requirement of this Section shall be deemed complied with if the notice is sent by certified mail, return receipt requested, to the Unit address and to any other address the Owner of the Unit has designated in writing to the Association. Enforcement under this Section is not dependent upon or related to other restrictions and/or other actions, except as provided in this Section.

**Article 5**  
**Maintenance: Common Property**

5.1 Association's Maintenance Responsibility. The Association shall maintain and keep in good repair the Common Property, which maintenance shall include, without limitation, the maintenance, repair and replacement of all landscaping and improvements situated thereon.

The Association shall also maintain (whether or not constituting Common Property) the following: (a) all entry features and entry area landscaping serving the Community, including, without limitation, any signage, entry features or entry area landscaping and any irrigation and/or lighting system provided to such entry features, regardless of whether the same are located on Common Property or public right-of-way; (b) exterior lighting serving the Community; provided, however, each Owner of a Unit shall be responsible for the maintenance, repair and replacement of any exterior lighting attached to, exclusively serving or located on the residential dwelling on such Unit; (c) limited maintenance to the exterior of a residential dwelling located on a Unit as provided in Section 5.2 hereof; (d) landscaping in the Community as provided in Section 5.3 hereof; (e) the Gate System; (f) the private Community streets, alleys, parking spaces, sidewalks, medians, street lights and street signs; (g) all storm water drainage facilities, including, without limitation, the underground detention facilities, serving the Community; (h) the centralized mailbox area(s) and the mailboxes located thereon; (i) the Community recreational facilities; (j) retaining walls located in the Community; and (k) all pipes, wires, conduits, utility lines, plumbing and water and sanitary sewer pipes or facilities that serve more than one Unit or any portion of the Common Property, if and to the extent the same are not maintained on an ongoing basis by a governmental entity.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs associated therewith, not paid for by insurance, shall be assessed against the Unit of such Owner as a specific assessment. All maintenance performed by the Association shall be consistent with the Community-Wide Standard.

The Association shall have the right, but not the obligation, to maintain property it does not own, regardless of whether such property is located within or outside of the Community, where the Board has determined that such action would benefit the Owners. In addition, the Board of Directors, without a vote of the members, but with the consent of the Declarant, shall have the right to enter into easement and covenant to share cost agreements where the Board has determined that such action would benefit the Owners. The Board of Directors may authorize the officers of the Association to enter into contracts with any Person or Persons to perform maintenance hereunder on behalf of the Association.

## 5.2 Exterior Unit Maintenance.

(a) By the Association. As provided in Section 5.1 above, the Association shall provide certain maintenance to the exterior portions of the residential dwelling located on a Unit in the Community on a schedule determined by the Board of Directors in its sole discretion. Maintenance to a residential dwelling located on a Unit shall only include the following: (i) painting, staining, sealing, and/or pressure washing the exterior portions of a residential dwelling located on a Unit, as applicable, on a schedule determined by the Board of Directors in its sole discretion; provided, however, the Association shall only be responsible for painting, staining or sealing those portions of a residential dwelling which were painted, stained or sealed by the Declarant in connection with the initial construction of the dwellings or which were painted, stained or sealed by the Association as provided herein below; (ii) maintenance, repair and replacement of the roof decking and shingles or other roof covering and roof surface materials on Units; (iii) maintenance, repair and replacement of the downspouts and gutters, if any; (iv) painting and/or staining the exterior surfaces of all doors, door frames, door trim, window frames and window trim on a schedule determined by the Board of Directors in its sole discretion; and (v) maintenance, repair and replacement of the driveways and walkways serving the Units. The Association may, acting through the Board of Directors, in its sole discretion, with the consent of Declarant and upon sixty (60) days' written notice to the Owners, paint, stain or seal any unfinished wood surfaces located on the exterior portions of a residential dwelling on a Unit. In the event the Association elects to paint, stain or seal any unfinished wood surfaces located on the exterior portions of a residential dwelling on a Unit, the Association shall be responsible for maintaining such exterior portions of the residential dwellings thereafter on a schedule determined by the Board of Directors in its sole discretion in accordance with Section 5.2(a)(i) above.

The Board of Directors may promulgate rules setting forth the extent of maintenance to be performed by the Association and may assume responsibility for providing additional maintenance as long as all Units are maintained according to the same standard. The Board of Directors may authorize the officers of the Association to enter into contracts with any Person or Persons to perform maintenance hereunder on behalf of the Association. In the event any personal property of an Owner or Occupant, including, but not limited to, any satellite dish, grill or patio furniture, is stored, placed or affixed to a deck, patio, balcony, the exterior of a residential dwelling, or such other areas the Association is responsible for maintaining pursuant to this Article 5, the Association shall have the right, but not the obligation, in the Board's sole discretion, to remove and reinstall such personal property in order to perform its maintenance responsibilities hereunder, and any and all costs associated with the removal and reinstallation of such property may be assessed against the Unit of such Owner or Occupant as a specific assessment. Additionally, in the event the Association incurs additional maintenance costs as a result of any personal property of an Owner or Occupant being stored, placed or affixed to any areas the Association is obligated to maintain, the Association shall have the right to specifically assess such additional maintenance costs against the Unit of such Owner or Occupant. In the event damage or destruction of any such personal property occurs during the performance of any maintenance, repair or replacement hereunder, the Association, and the officers, directors, agents or employees thereof, shall not be liable for such damage or destruction.

(b) By the Unit Owner. Except for maintenance performed on or to a Unit or Limited Common Property by the Association pursuant to Section 5.1 and Section 5.2(a) hereof, all maintenance of the Unit and Limited Common Property appurtenant to such Unit and all structures and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Unit and Limited Common Property in a manner consistent with the Community-Wide Standard and this Declaration. Maintenance by the Owner shall include, without limitation, the following: (i) prompt removal of all litter, trash, refuse, and waste; (ii) complying with all governmental health and police requirements; (iii) maintenance, repair and replacement of all steps, stoops, decks (whether enclosed or not), balconies, patios (whether enclosed or not) and patio surfaces and landscaping placed on the patio, decks or balconies, if any; (iv) maintenance, repair and replacement of HVAC or similar equipment and attic fans, ventilation systems, vents and ducts; (v) maintenance, repair and replacement of all doors, including screen and storm doors, garage doors, and hinges, frames, glass, screens and hardware which are part of the entry system, to the extent the same are not maintained by the Association pursuant to Section 5.2(a) hereof; (vi) maintenance, repair and replacement of hose bibs contained in the exterior walls of a Unit; (vii) maintenance, repair and replacement of all exterior lighting fixtures; (viii) maintenance, repair and replacement of all windows, including, without limitation, window screens, frames, glass and hardware, to the extent the same are not maintained by the Association pursuant to Section 5.2(a) hereof; (ix) maintenance, repair and replacement of all exterior hardware; (x) maintenance, repair and replacement of all structural components of the residential dwelling located on the Unit, including, without limitation, the building foundation and footings, including waterproofing, either above or below grade, walls, floor joists, and chimney supports and piers; (xi) repairing exterior damage to improvements; and (xii) except as otherwise specifically provided herein, any pipe(s), wire(s), conduit(s), utility lines, plumbing and sanitary sewer and water lines which serve only the Unit, regardless of whether said pipe(s), wire(s), conduit(s), utility lines, plumbing and sanitary sewer and water lines are located within or outside of a Unit's boundaries.

Notwithstanding the foregoing, each Owner of a Unit shall be obligated to: (i) perform such Owner's maintenance responsibility in such manner so as not to unreasonably disturb other Persons in or on other Units; (ii) promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible; and (iii) not make any alterations in the portions of the Unit which are to be maintained by the Association, if any, remove any portion thereof, make any additions thereto, or do anything with respect to the exterior or interior of such Unit or the structures thereon which would or might increase the Association's maintenance costs or jeopardize or impair the safety or soundness of any Unit or any structure or improvement located thereon, without first obtaining the written consent of the Board and all Owners and Mortgagees of the Units affected. Each Owner shall also not impair any easement without first obtaining written consent of the Association and of the Owner or Owners and their Mortgagees for whose benefit such easement exists.

5.3 Landscaping Maintenance. Except as may be otherwise determined by the Board as provided herein, the Association shall maintain and keep in good repair the landscaping improvements located on the exterior portions of the Community (whether or not constituting

Common Property), including, without limitation, green space, open space and Limited Common Property. Such maintenance shall be performed at a level to be determined in the sole discretion of the Board. The Board of Directors in its sole discretion may leave certain exterior portions of the Community as undisturbed natural areas and may change the landscaping in the Community at any time and from time to time. Owners shall not add, remove or modify trees, shrubs, bushes, plants or other vegetation to the exterior portions of the Community maintained by the Association without prior written approval pursuant to Article 6 hereof or otherwise as specifically authorized in the Architectural Guidelines (as defined below), if any.

The Board of Directors may promulgate rules setting forth the extent of landscaping maintenance to be performed by the Association and the rights of Owners with respect to adding or modifying landscaping improvements, including, for example lawn mowing, trimming of trees and shrubs, fertilization, and planting of seasonal flowering plants in certain areas of the Community. Landscaping improvements installed by the Owner in accordance with the provisions of this Declaration shall be maintained by the Owner in a manner consistent with the Community-Wide Standard. Any landscaping improvements which are not properly maintained, including, but not limited to, damaged, diseased or dead plants, shrubs and trees may, at the sole discretion of the Board and subject to the notice provisions of Section 5.5 hereof, be removed from the Community and all costs associated therewith may be assessed against the Owner of the Unit as a specific assessment. Any exterior landscaping improvements, whether originally installed by an Owner or the Association or in the initial development of the Community, may, at the sole discretion of the Board of Directors, be removed from the Community. The costs associated with removing any trees, shrubs, bushes, plants or other vegetation installed by an Owner in violation of this Section may be assessed against the Owner and the Unit as a specific assessment pursuant to this Declaration.

The Association shall maintain Limited Common Property enclosed by a fence; provided, however, the Owner must allow access through an unlocked gate and no pet shall be present in the enclosed area in order for such area to be maintained by the Association. In the event that the Owner of a Unit benefited by such Limited Common Property refuses access to the area enclosed by the fence, the gate is locked or a pet is present at the time that maintenance is performed to such enclosed area by the Association or its agents, said Owner shall not be entitled to a reduction in the liability for assessments due in the event the Association is unable to maintain the property enclosed by said fence and such Owner shall be obligated to maintain such area in a manner consistent with the Community-Wide Standard. The Board of Directors, with the consent of the Declarant, shall have the right to elect not to maintain the Limited Common Property by a resolution of the Board, in which case, the Limited Common Property shall be maintained by the Owner of the Unit benefited by such Limited Common Property.

**5.4 Party Walls.** Each wall built as part of the original construction of the residential dwelling located on a Unit which shall serve and separate any two (2) adjoining residential dwellings located on Units thereon shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use

of the wall in equal proportions. If a party wall is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall may restore it, and the other Owner who is benefited by the wall shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions. All such repair or rebuilding shall be done within a reasonable time, and in such workmanlike manner with materials comparable to those used in the original wall, and shall conform in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. Whenever any such wall or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size as the original wall.

5.5 Failure to Maintain. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement to be performed. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable period of time. If an Owner does not comply with the provisions hereof, the Association may provide such maintenance, repair or replacement and all costs thereof shall be assessed against the Owner and the Unit as a specific assessment. This Section shall not apply to Units owned by Declarant or CND unless improved with a dwelling and occupied as a residence.

5.6 Conveyance of Common Property by Declarant to Association; No Implied Rights. Declarant or CND may transfer or convey to the Association, at any time and from time to time, any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and, if and as provided in Section 5.1 hereof, maintained by the Association for the benefit of its members. Until the rights of Declarant terminate as provided in Section 11.5 hereof, Declarant may, upon written notice to the Association, require the Association to re-convey to Declarant, as the case may be, all or any portion of the Common Property, improved or unimproved, at no charge to Declarant, without a vote of the members of the Association, if all or a portion of the Common Property is: (a) found by Declarant to have been conveyed in error; (b) needed by Declarant to make adjustments in property boundary lines; or (c) needed by Declarant due to changes in the overall scheme of development for the Community.

The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept/make on behalf of the Association any such conveyance and re-conveyances and to execute on behalf of the Association any and all documents, including, without limitation, deeds, necessary or convenient to effectuate and document any such conveyances and re-conveyances, and all acts of such attorney-in-fact are hereby ratified. The power and agency hereby granted

are coupled with an interest and are irrevocable by death or otherwise. Neither Declarant nor CND shall be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. The Declarant may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. The recordation of any subdivision plat, the use by the Owners, or maintenance by the Association of any property shall not create any rights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or CND to the Association or the Owners, as the case may be, by an instrument recorded in the Office of the Clerk of Superior Court of Fulton County, Georgia.

5.7 Partition. The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of: (a) all Owners of all portions of the property located within the Community; and (b) all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Units.

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

5.9 Limitation of Liability. Owners, Occupants and their guests shall use the Common Property and all portions of the Community not contained within a Unit, including, without limitation, the private Community alleys and Community recreational facilities, at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. All Owners and Occupants shall have an affirmative duty and responsibility to inspect the Common Property, including, without limitation, the private Community streets, alleys and recreational facilities, for any defects, perils or other unsafe conditions relating to the use and enjoyment thereof. The Association, the Declarant, CND and their respective officers, directors, employees, representatives and agents shall not be held liable for: (a) personal injury to any person occurring on the Common Property; (b) loss or damage to personal belongings used or stored on the Common Property or on any other portion of the Community; or (c) loss or damage, by theft or otherwise, of any other property of an Owner or Occupant.

In addition to the foregoing, the Association, the Declarant, CND and its respective officers, directors, employees, representatives and agents shall not be liable for injury or damage to any Person or property: (x) caused by the elements or by an Owner or any other Person; (y)

resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association or from any portion of the Common Property; or (z) caused by any street, pipe, plumbing, drain, pond, lake, dam, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair.

#### 5.10 Measures Related to Insurance Coverage.

(a) The Board of Directors shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Community that are the maintenance responsibility of the Unit Owner which will, in the Board's sole discretion, decrease the possibility of fire or other damage to any improvements located in the Community, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring Owners to: (i) turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; (ii) insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes; (iii) install smoke detectors; (iv) make improvements to the Owner's Unit; and (v) take such other measures as the Board may reasonable require, so long as the cost of such work does not exceed the amount of the general assessment applicable to the Unit in any twelve (12) month period.

(b) In addition to, and not in limitation of, any other rights the Association may have, if any Unit Owner does not comply with any reasonable requirement made by the Board pursuant to Section 5.10(a) above, the Association, upon fifteen (15) days' written notice (during which period the Unit Owner may perform the required act or work without further liability), may perform such required act or work and such cost shall be a specific assessment and a lien against the Unit and shall be collected as provided herein for the collection of assessments. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to Section 5.10(a) above, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

5.11 Garbage Pick-Up and Recycling. The Association shall have the right, but not the obligation, to designate and contract with a private trash removal company on behalf of all Owners and Occupants in the Community to pick up all usual and customary household trash and recycling on a regular basis. In the event the Association enters into a contract with a private trash removal company as provided above, all charges for usual and customary trash collection and recycling shall be assessed to each Unit equally as part of the general assessment in accordance with Section 4.4 hereof. While the removal of normal household trash and recycling will be covered by such contract, additional charges may be incurred for the removal of used appliances, other large items or any other extraordinary pick-up needs and such additional charges incurred by the Association may be specifically assessed against the applicable Unit pursuant to Section 4.6 hereof. If a Unit Owner, for any reason, refuses trash collection and recycling service provided by the Association, such Owner shall nevertheless still be obligated to

pay the full amount of the general assessment. Trash and recycling receptacles shall be placed at the curb no earlier than 5:00 p.m. the day before pick-up and shall be removed within twenty-four (24) hours. All Community trash removal and recycling shall be subject to such further rules and regulations as the Board may adopt, including without limitation, the designation of a particular trash pick-up day throughout all or a portion of the Community.

#### 5.12 Fire Sprinkler Systems.

(a) General. The Units contain fire sprinkler systems, which will be served by one or more dedicated water lines within the Community.

(b) Owner's Responsibility. Each Owner of a Unit shall, at his or her sole cost and expense, be responsible for the maintenance, repair and replacement of any sprinkler head located within such Unit and any pipes, wires, conduits or other equipment used in connection with the fire sprinkler system which exclusively serve such Owner's Unit, regardless of whether the same are located within or outside of a Unit's boundaries. In addition, in the event there is a defect, malfunction, damage or suspected issue with the fire sprinkler system within the Unit, said Owner shall promptly report said issue to the Association.

(c) Association's Responsibility. The Association shall be responsible for the inspection and/or testing of the fire sprinkler system and any maintenance, repair or replacement to any pipes, lines or conduits used in connection with the fire sprinkler system which serve more than one (1) Unit. Any costs and expenses incurred by the Association associated with the inspection, operation, monitoring, testing, maintenance, repair or replacement of the fire sprinkler system shall be a specific assessment against a Unit as provided in Section 4.6 of this Declaration. To the extent said inspection, operation, monitoring, testing, maintenance, repair or replacement of the fire sprinkler system serves more than one (1) Unit, said costs and expenses shall be pro-rated among all of the applicable Units.

(d) Easements. The Association and its contractors, representatives, agents and other Persons authorized by the Board shall have an easement to enter the Units to test and/or monitor the fire sprinkler systems and perform any maintenance or repairs thereto. The Declarant and the Association, and their respective affiliates, directors, officers, employees and agents of any of the foregoing, shall not be liable for any illness, damage or injury caused by the testing of fire sprinkler system.

(e) Inspection of Fire Sprinkler System. From time to time the Association shall inspect the fire sprinkler system to ensure that it is operating and functioning as designed and intended; provided, however the fire sprinkler system shall be inspected at least on an annual basis. Owners shall cooperate fully with the Association in connection with the inspection of said fire sprinkler system and shall provide access to the Unit for the purpose of such entry or have someone available at such times as are designated by the Board to allow entry into the Unit for these purposes.

5.13 Gate System. It is anticipated that the Declarant will install the Gate System in the Community. Each Owner, by accepting a deed to a Unit, shall be deemed to acknowledge and agree to the following:

(a) The Board of Directors, with the consent of the Declarant, which consent shall not be unreasonably withheld, shall determine when the Gate System will be operational.

(b) Neither Declarant, the Association nor their respective officers, directors, members, representatives or agents shall be responsible for the security of Owners, Occupants or their family members, guests, invitees or property. NEITHER DECLARANT, THE ASSOCIATION NOR ANY OWNER OR OCCUPANT GUARANTEES OR ASSURES TO ANY OTHER OWNER OR OCCUPANT NOR ANY OTHER PARTY WHOMSOEVER THAT THE GATE SYSTEM WILL IN ANY MANNER WHATSOEVER PROVIDE PERSONAL PROTECTION OR SECURITY TO ANY OWNER OR OCCUPANT, THEIR PERSONAL POSSESSIONS OR TO GUESTS OR INVITEES, OR TO ANY OTHER PERSON, AND EACH OWNER, BY THE ACCEPTANCE OF A DEED TO A UNIT, SHALL HAVE ASSUMED THE ENTIRE RISK AS BETWEEN SUCH OWNER AND DECLARANT OR THE ASSOCIATION, AS APPLICABLE, FOR ANY LOSS OR DAMAGE TO PERSON OR PROPERTY WITHIN THE COMMUNITY ARISING FROM ANY DEFICIENCY, FAILURE OR DEFECT IN THE GATE SYSTEM OR OTHERWISE.

(c) All governmental authorities shall have access to the Community for law enforcement, safety and emergency purposes. Each Owner shall look solely to the applicable governmental authority for the provision of law enforcement and police protection.

(d) The Gate System is not intended to replace or to serve in lieu of individual alarm systems or other measures designed to provide security at a residence or within any Unit. Each Owner is encouraged to install personal security devices upon and within such Owner's Unit to the same extent that would be prudent if the Gate System did not exist.

(e) The Gate System will be installed based upon the representations of vendors regarding the operation and performance capabilities of the components of the Gate System.

(f) DECLARANT HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AND MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER REGARDING THE GATE SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR THE PURPOSES FOR WHICH IT WAS DESIGNED. Declarant does not guarantee that the Gate System will avert or prevent occurrences or consequences which the Gate System is designed to avert or prevent.

(g) The Gate System shall be owned, operated, and maintained by the Association at its sole cost and expense and the costs associated therewith shall be included in the general assessment as provided in Section 4.4 hereof. Declarant shall not be required to operate or maintain the Gate System.

(h) Each Owner shall use the Gate System in the proper manner and within the rules and regulations relating thereto as may be adopted from time to time by the Board of Directors.

5.14 Limited Common Property. As provided in Section 1.11 hereof, a portion of the Common Property located to the rear of certain Units may be reserved for the exclusive benefit and use of the Owners of such Units as provided herein. A portion of Common Property shall only be considered Limited Common Property reserved for the exclusive benefit and use of a Unit if such portion of Common Property is fenced in for a Unit's exclusive use and benefit with a fence that has been installed by Declarant and/or approved in accordance with Article 6 hereof.

(a) Restriction Regarding Use. No Owner, Occupant, or any other Person may make any exterior change, alteration, or construction on or to any portion of the Limited Common Property appurtenant to a Unit, including, without limitation, the painting, alteration, installation or placement of any fence, deck, patio, landscaping, object, sign, equipment, light, artificial vegetation, exterior sculpture, fountain, flag, or thing, without prior written approval in accordance with the provisions of Article 6 hereof or any applicable Architectural Guidelines. Except as otherwise provided in Sections 5.1, 5.2 and 5.3 hereof, Owners and Occupants shall be responsible for maintaining all improvements located within the Limited Common Property appurtenant to each Unit.

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

(c) Rights Reserved for the Declarant. Notwithstanding anything to the contrary herein, so long as Declarant owns any property in the Community or has the right to add additional property to the Community pursuant to Section 2.2 hereof, Declarant shall have the right, without the vote of the members of the Association, to designate any portion of the Common Property as Limited Common Property or reconfigure or relocate the Limited Common Property by either recording an amendment to such effect in the Fulton County, Georgia land records or identifying the same on one or more recorded subdivision plats for the Community; provided, however, no such relocation or reconfiguration shall materially adversely affect the Owner of a

Unit entitled to the use and enjoyment of such Limited Common Property without the consent of the Owner thereof.

Article 6  
Architectural Standards

6.1 General. No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavating, grading, filling, construction of impervious surfaces, building, exterior alteration of existing improvements, installing storm and screen doors, storm windows and fencing, changing the exterior color of any existing improvement, and planting and removing landscaping materials), shall be commenced or placed upon any part of the Community unless installed by the Declarant or an affiliate of the Declarant, approved in accordance with this Article, or otherwise expressly permitted under this Declaration. Any Owner may remodel, paint or redecorate the interior of a structure located on a Unit without approval hereunder. However, additions and/or modifications to the interior of porches, patios, decks, balconies and similar portions of a structure visible from outside of the Unit shall be subject to approval. No approval shall be required to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of the Declarant or its affiliates or to improvements to the Common Property made by or on behalf of the Association. This Article may not be amended without the written consent of the Declarant until its respective rights have terminated as provided herein.

6.2 Guidelines and Procedures. Except as provided above or as specifically articulated in the Architectural Guidelines as defined in Section 6.3 hereof, no exterior construction, addition or alteration shall be made unless and until plans and specifications shall have been submitted in writing to and approved by the Declarant. Such plans and specifications shall be of sufficient detail to allow the Declarant to make its review and to the extent required by the Declarant shall show the nature, kind, shape, height, materials and location of the proposed structure or improvement. The Declarant shall be the sole arbiter of such plans and specifications and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. If the Declarant fails to approve or to disapprove submitted plans and specifications within sixty (60) days after the receipt of all required plans and specifications, such approval shall be deemed to have been given. If construction does not commence on a project for which plans have been approved within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the Declarant for reconsideration.

As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for the maintenance, repair, replacement and insurance to and on any improvement, structure, change, modification, addition or alteration. In the discretion of the Declarant, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Declarant and its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any

property in the Community to determine whether or not these restrictive covenants have been or are being complied with and such Persons shall not be deemed guilty of trespass by reason of such entry; provided, however, nothing herein shall authorize entry into a residential dwelling located on a Unit without the consent of the Owner thereof.

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

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

6.5 No Waiver. The approval of the Declarant of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval or consent of the Declarant, shall not be deemed to constitute a waiver of

any right to withhold approval or consent as to any similar proposals, plans and specifications or drawings or matters whatsoever subsequently or additionally submitted for approval or consent.

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

6.7 Enforcement. Any structure, improvement or landscaping improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant, Owners shall, at their own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. The Declarant, CND, the Association and their respective officers, directors, members, employees and agents shall not be held liable to any Person for exercising the rights granted by this Section, including, without limitation, claims for damages resulting from the removal of the nonconforming structure or improvement in accordance with the procedures herein. All costs, including, without limitation, reasonable attorney's fees actually incurred, may be assessed against the Unit as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Architectural Guidelines may be excluded by the Declarant from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws.

In the event of noncompliance with this Article, the Declarant or the Association, as applicable, may record in the appropriate land records a notice of violation hereunder naming the violating Owner. Declarant or the Association, as applicable, shall also have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article, including, without limitation, the right to levy and collect fines as provided herein and in Section 3.21 of the Bylaws.

6.8 Architectural Review by Declarant. Until: (a) the Declarant no longer owns any property in the Community and no longer owns any property that can be annexed into the Community as provided herein; and (b) each Unit has been improved with a dwelling for which a certificate of occupancy has been issued, the Declarant shall have the sole right, power and authority under this Article. Notwithstanding the foregoing, the Declarant may in its sole discretion relinquish architectural control as to certain types of improvements or modifications to the Board of Directors while retaining control over all other building and construction in the

Community; provided, however, any right, power or authority of the Declarant which may be relinquished to the Board of Directors prior to the termination of the rights of Declarant hereunder shall only be by a written instrument executed by Declarant and recorded in the Fulton County, Georgia land records and no such right, power or authority shall be relinquished by implication or otherwise. For example and without limitation, the Declarant may relinquish control over modifications of existing structures to the Board of Directors while retaining all authority to review and approve new home construction. Upon the surrender in writing of all or a portion of such right and authority, the Board of Directors shall then have such jurisdiction over architectural control under this Article as may have been relinquished by the Declarant. The establishment of an advisory architectural review committee shall not be deemed to be a relinquishment by Declarant of any of its right, power and authority hereunder. Notwithstanding the foregoing, so long as CND owns a Unit, any relinquishment or termination of the rights of Declarant hereunder shall require the written consent of CND, which consent shall not be unreasonably withheld, conditioned or delayed.

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

## Article 7 Use Restrictions and Rules

7.1 Rules and Regulations. The Board of Directors may, from time to time, with the consent of the Declarant and without a vote of the members, promulgate, modify or delete reasonable rules and regulations applicable to the Community. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote and the Declarant.

7.2 Residential Use. Each Unit shall be used for residential purposes exclusively. Leasing of a Unit for residential occupancy pursuant to Article 8 hereof shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Unit, except that the Owner or Occupant residing at the Unit may conduct business activities within the residential dwelling located thereon so long as the business activity: (a) does not

otherwise violate the provisions of the Declaration, Bylaws or rules and regulations of the Association; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Unit; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; (h) does not threaten the security or safety of other residents of the Community; (i) does not involve door-to-door solicitation within the Community; and (j) does not involve regular visitation of the Unit by employees who do not reside at the Unit, clients, customers, suppliers or other business invitees, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity. Notwithstanding the foregoing, nothing in this Section 7.2 shall be construed as prohibiting the Declarant from maintaining model homes, speculative housing or sales and construction trailers within the Community.

**7.3 Signs.** No sign of any kind shall be erected or displayed within the Community without prior written approval under Article 6 hereof; provided, however, the following signs may be erected on any Unit without approval: (a) one professionally lettered for-sale sign and security signs not larger than 16 square inches, all of which shall be consistent with the Community-Wide Standard; provided, however, the Board or its designee may require that the sign be displayed only from within the dwelling structure; (b) signs required by legal proceedings; (c) one (1) "life event" sign commemorating a birth, graduation, or similar life event for a period not to exceed seven (7) days from the date of the event; and (d) such other signs as may be permitted under the Architectural Guidelines. Notwithstanding the foregoing, the Board, on behalf of the Association, CND and the Declarant shall have the right to erect and display reasonable and appropriate signs, including, without limitation, marketing and sales signs relating to the development, construction or sales of residential dwellings located on Units in the Community. The Board of Directors shall also have the right to adopt reasonable rules and regulations governing the display and placement of signs in the Community, including, without limitation, imposing reasonable time, place and manner restrictions. The Board or Declarant, as the case may be, may impose a fine determined by the Board in its sole discretion per day for the display of any sign which violates this provision and is not removed within twenty-four (24) hours after written demand is delivered to the Owner at that Unit. The provisions of this Section shall not apply to any Mortgagee in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure.

#### 7.4 Vehicles; Parking.

(a) General. Vehicles shall be parked only in appropriate parking spaces serving the Unit or other designated parking areas established by the Board, if any. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking spaces serving the Unit" shall refer to the number of garage parking spaces and if, and only if, the Owners and Occupants of a Unit have more vehicles than the number of garage parking spaces, those excess vehicles which are an Owner's or Occupant's primary means of transportation on a regular basis may be parked on the driveway serving such Unit so long as the driveway serving such Unit is deep enough to fit a parked vehicle without such vehicle encroaching onto the private streets or alleys in the Community. All parking shall be further subject to such reasonable rules and regulations as the Board may adopt from time to time.

(b) Parking Spaces. Any and all designated parking spaces located on the Common Property ("Parking Spaces") shall be for temporary parking by Owners, Occupants and their guests, invitees and licensees on a first-come, first-served basis, subject to such reasonable rules as the Board may adopt from time to time. The Parking Spaces are part of the Common Property and Owners and Occupants shall have no exclusive rights to use the Parking Spaces located adjacent to their Units.

(c) Garages. All homes shall contain a garage; carports shall not be permitted. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. Garages shall be used primarily for the parking of vehicles and not for other purposes; provided, however, use of a garage for storage shall be permitted provided such storage does not prevent an Owner or Occupant from parking such Owner's or Occupant's vehicles in the garage. Garages shall not be converted to additional living space unless the same has been approved in accordance with Article 6 hereof.

(d) Disabled and Stored Vehicles. No vehicle may be left upon any portion of the Community, except in an enclosed garage or other area designated by the Board, if any, for a period of more than five (5) days if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle may be removed from the Community by the Board of Directors or the appropriate authority of Fulton County. No towed vehicle, boat, personal watercraft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go cart, golf cart, commercial vehicle, camper, bus or mobile home shall be regularly stored in the Community or temporarily kept in the Community, except if kept in an enclosed garage or other area designated by the Board, if any, for periods longer than forty-eight (48) hours (the temporary removal of such vehicle from the Community shall not be sufficient to establish compliance with the forty-eight (48) consecutive hour provision provided for herein). Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. No eighteen wheel trucks or the cabs of such trucks or trucks with a load capacity in excess of three-quarters of a ton shall be parked, kept or stored within the Community except as may be

reasonably necessary to provide service to or delivery within the Community or as otherwise permitted by the Board of Directors.

(e) Commercial Vehicles. The term "commercial vehicles" as used in this paragraph, shall include, without limitation, any vehicle which bears any indicia of commercial use, including, but not limited to, writing, logos, ladders, ladder racks, vehicles displaying signage of a commercial or business nature or vehicles which are not primarily used for the transportation of passengers, all as determined by the Board in its sole discretion. Commercial vehicles shall not be permitted in the Community, except if kept in an enclosed garage; provided however, construction, service, and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service to or make a delivery within the Community.

(f) Remedies of the Association for Noncompliance. If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's rules and regulations, the Board or agent of the Association may cause the vehicle to be towed or booted, subject to compliance with applicable law, including any notice required thereby. The notice may be a general notice by signage or may be placed on the vehicle, if and as allowed under applicable law, as the case may be. If a vehicle is parked in a fire lane, is blocking another vehicle, is obstructing the flow of traffic, is parked on any landscaped area or otherwise creates a hazardous condition, the Board or agent of the Association may have the vehicle towed immediately, subject to compliance with applicable law. If a vehicle is towed or booted in accordance with this subparagraph and applicable law, neither the Declarant, CND, the Association nor any officer or agent of the foregoing shall be liable to any person for any claim of damage as a result of the towing or booting activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

(g) Declarant and CND Exception. Notwithstanding anything to the contrary in this Section 7.4, the Declarant and CND and their respective agents, subcontractors and assigns shall have the right, during regular business hours, to park vehicles anywhere in the Community as needed in order to facilitate the construction, development, maintenance and build out of the Community.

7.5 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Unit, with the exception of dogs, cats or other usual and common household pets in a reasonable number as determined by the Board from time to time. No animals shall be kept, bred or maintained for any commercial purpose. No dog runs, invisible fences, runners or exterior pens for animals shall be erected or maintained on any portion of the Community unless approved in accordance with the provisions of Article 6 hereof. Pet doors leading to the outdoors shall not be permitted on any Unit in the Community unless approved in accordance with the provisions of Article 6 hereof. Dogs shall at all times when outside of a dwelling located on a Unit be kept on a leash or otherwise under the physical control of a responsible person. All Owners must control their animals at all times, whether or not such Owner is present, in a manner that will prevent any animal from: (a) making noise at

objectionable sound levels for extended periods of time, whether continuously or intermittently; (b) endangering the health or safety of other Owners, their families, guests or invitees or creating fear in other Owners as to the safety of themselves, their families, guests or invitees; or (c) otherwise constituting a nuisance or inconvenience to the Owner(s) or Occupant(s) of any other Unit; all of the foregoing as determined by the Association in its sole discretion. The Association may require that an Owner remove any animal that presents an actual threat to the health or safety of residents and require abatement of any nuisance or unreasonable source of annoyance. In the event that the Owner fails to remove an animal as provided herein, the Association shall have the right to institute legal action to have the animal removed and all costs associated therewith, including, without limitation, reasonable attorneys' fees actually incurred, shall be a specific assessment against the Unit of such Owner.

All animals shall be registered, licensed and inoculated if and as required by law. Animal control authorities shall be permitted to enter the Community to patrol and remove unlicensed animals. Animal waste deposited in the Community must be removed by the owner of the animal or the person responsible for the animal. The Association may adopt reasonable rules and regulations designed to minimize damage and disturbance to other Owners and Occupants, including regulations requiring damage deposits, waste removal, leash controls and noise controls.

**7.6 Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Unit or appurtenant Limited Common Property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit or appurtenant Limited Common Property to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property within the Community. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. Without limiting the generality of the foregoing, no horns, exterior speakers, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, screaming, shouting, excessively loud talking, fighting, raucous behavior, insobriety, playing loud music or television, use of any alarm, equipment, or device, mechanical or otherwise, which creates or produces excessively loud sounds or any vibrations, or any conduct which creates any noxious or offensive odors outside a home shall be permitted, located, used or placed on any Unit, Limited Common Property, or any portion thereof. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board. Notwithstanding anything to the contrary herein, each Owner and Occupant acknowledges that the Declarant, CND and their respective agents, subcontractors

or employees may engage in construction activities on one or more Units in the Community and further agrees that such construction activities shall not be deemed a nuisance as provided herein.

7.7 Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken in any part of the Community. This Section shall not apply to Declarant or CND during the initial construction of a residential dwelling on a Unit.

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

7.9 Firearms. The discharge of firearms within the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, archery equipment and firearms of all types, regardless of size.

7.10 Fences. No fence or fencing type barrier of any kind, including, without limitation, an invisible fence, shall be placed, erected, allowed or maintained upon any Unit, Common Property, or Limited Common Property unless approved in accordance with the provisions of Article 6 hereof. Notwithstanding the foregoing, Declarant, CND and the Association may erect any type of fence on the Common Property or elsewhere within the Community as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for the health and safety of Owners and Occupants. Any fence erected or installed to enclose Limited Common Property by the Declarant or an Owner pursuant to Article 6 hereof shall contain at least one gate which provides access to the area enclosed by such fence in order to allow access by the Association and its agents to maintain such area as provided in Article 5 hereof.

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

7.12 Lighting and Display. Exterior lighting on any Unit visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Unit; (b) street lights in

conformity with an established street lighting program for the Community; (c) seasonal decorative lights for a period of thirty (30) days from the date of installation; (d) front house illumination of model homes; or (e) other lighting approved under and pursuant to Article 6 hereof or as may be otherwise permitted as provided in the Architectural Guidelines. Religious or holiday symbols and decorations may be displayed on a Unit of the kinds normally displayed in single-family residential neighborhoods; provided, however, the Association may adopt time, place and manner restrictions with respect to said symbols and decorations visible from outside structures on the Unit, including limitations on appearance, style, size, and number.

7.13 Artificial Vegetation, Gardens, Play Equipment, Exterior Sculpture, Water Features and Similar Items. No artificial vegetation shall be permitted on the exterior of any property in the Community. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals or trampolines), exterior sculpture, fountains or water features may be erected on any portion of the Community without prior written approval in accordance with the provisions of Article 6 hereof or as may be otherwise permitted in the Architectural Guidelines.

7.14 Flags. Except for flags which may be installed by the Declarant, no flags may be displayed on any Unit without prior written approval in accordance with the provisions of Article 6 hereof or as may be otherwise permitted in the Architectural Guidelines established thereunder; provided, however no such approval shall be required to display the flag of the United States of America and the current flag of the State of Georgia on a Unit in accordance with the provisions of the U.S. Flag Code (36 US Code 10) and usual and customary practice. The Board of Directors may promulgate reasonable rules and regulations with respect to the display of flags in the Community, including, without limitation, regulating the size of flags that may be displayed and imposing reasonable time, place and manner restrictions pertaining to the display of the United States flag; provided, however, the Association shall not enact any rule or regulation which has the effect of prohibiting any Owner from displaying the flag of the United States of America on a Unit in the Community in contravention of the Freedom to Display the American Flag Act of 2005.

7.15 Conservation Equipment. No solar energy collector panels or attendant hardware or other conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure or otherwise screened from view and approved in accordance with the provisions of Article 6 hereof or as may be otherwise permitted as provided in the Architectural Guidelines.

7.16 Clotheslines. No exterior clotheslines of any type shall be permitted upon any portion of the Community.

7.17 Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose. The side of all window treatments which can be seen at any time from the outside of any structure located on a Unit must be white, off-white or such other acceptable color(s) as may be permitted in the Architectural Guidelines or approved in accordance with the provisions of Article 6 hereof. Bed

sheets, blankets, towels, black plastic, paper and similar type items shall not be used as window treatments.

7.18 Storm and Screen Doors and Windows; Pet Doors. Owners shall not add storm and screen doors and storm windows on any Unit without prior approval in accordance with the provisions of Article 6 hereof. No animal door and/or pet door of any type shall be installed on any Unit unless approved in accordance with the provisions of Article 6 hereof.

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

7.20 Garbage Cans, Firewood, Etc. All garbage cans, recycling bins, firewood and other similar items shall be stored within the garage serving the Unit. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, recycling and yard waste receptacles shall be placed at the curb no earlier than 5:00 p.m. the day before pick up and shall be removed within twenty-four (24) hours. Trash pick-up and/or recycling shall also be subject to such reasonable rules and regulations as the Board of Directors may adopt from time to time in its sole discretion.

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

7.22 Heating of Units in Colder Months. In order to prevent the breakage of water pipes during colder months of the year resulting in damage to Units, increased common expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within all Units shall be maintained with the heating operating and at a minimum of fifty (50°) degrees Fahrenheit when the temperature is forecasted to or does reach thirty two degrees (32°) degrees Fahrenheit or below. Owners shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. If the heating equipment is not working, the Owner shall: (a) immediately inform the Owners of the other Units of such equipment failure and of the time needed in order to repair the equipment; and (b) take reasonable steps to keep the Unit heated sufficiently to prevent the breakage of water pipes.

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

7.24 Traffic Regulations. All vehicular traffic on the private Community streets and alleys shall be subject to the provisions of state and local laws concerning the operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including imposing reasonable safety measures and speed limits. The Association shall be entitled to enforce the same by establishing such enforcement procedures as it deems appropriate, including levying and collecting fines for the violations thereof. Only drivers properly licensed to operate motor vehicles on the public roads within the State of Georgia may operate any type of motor vehicle within the Community. All vehicles of any kind and nature which are operated on the private Community streets and alleys shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all Owners and Occupants.

7.25 Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Unit or Limited Common Property, and no trailer, camper, shack, tent, garage, barn or other structure may be used as a residence, either temporarily or permanently, without written approval in accordance with the provisions of Article 6 hereof. However, this Section shall not be construed to prevent Declarant, CND and their affiliates, agents, subcontractors or assigns or those engaged in development, construction, marketing, property management or sales in the Community from using sheds, trailers or other temporary structures for any of the foregoing purposes. In addition, nothing in this Declaration shall be construed to prevent Declarant, CND, and their respective agents, employees, affiliates, subcontractors and assigns from developing, constructing, marketing, or maintaining model homes, speculative housing, sales trailers and construction trailers within the Community.

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

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

7.28 Impairment of Units and Easements. An Owner shall take no action that will impair the structural soundness or integrity of any Unit or impair any easement or other interest in real property, nor allow any condition to exist which will materially adversely affect the other Units or their Owners or Occupants.

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

## Article 8 Restriction on Leasing

8.1 General. In order to protect the equity of the individual members, to carry out the purpose for which the Association was formed by preserving the character of the Community as a homogenous residential community of predominantly owner-occupied homes and by preventing the Community from assuming the character of a renter-occupied neighborhood, to comply with site specific zoning conditions for the Community, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially owner-occupied, leasing of Units shall be governed by the restrictions imposed by this Article.

No Owner may lease such Owner's Unit unless the Owner has received either a leasing permit or a hardship leasing permit, in writing, from the Board of Directors or Declarant, as applicable, all as may be more specifically set forth below. A leasing permit or hardship leasing permit will allow an Owner to lease such Owner's Unit in accordance with the terms and conditions set forth in this Section and in accordance with the rules and regulations of the Association and the covenants and conditions set forth in the Declaration. Notwithstanding anything to the contrary

herein, leasing permits and hardship leasing permits shall only be valid as to a specific Owner and Unit and shall not be transferrable between Units or subsequent Owners.

For purposes of this Article 8, leasing means the regular, exclusive occupancy of a Unit by any Person(s) other than the Owner for which the Owner received any consideration or benefit, including, but not limited to, a fee, rent, gratuity or emolument. For purposes hereof the following shall not constitute leasing: (a) occupancy of the Unit by member of the Owner's family; (b) occupancy of the Unit by a roommate of an Owner-Occupant; (c) occupancy of the Unit by one or more wards if the Unit is owned by their legal guardian; or (d) occupancy of the Unit by one or more beneficiaries of a trust if the Unit is owned in trust by the trustee.

8.2 Leasing Permits. Any Owner desiring to lease a Unit shall submit a written request regarding the same to the Board of Directors. The Board of Directors shall automatically approve an Owner's application for a leasing permit and shall issue the same if less than ten percent (10%) of the Units in the Community are leased. If ten percent (10%) or more of the Units in the Community are leased, no additional leasing permits shall be issued, except for hardship leasing permits as provided below, until that number falls below ten percent (10%). Owners who have been denied a leasing permit shall be placed on a waiting list to be issued such a permit. When the number of leased Units falls below ten percent (10%), the Owner at the top of the waiting list shall be issued a leasing permit and shall have ninety (90) days to lease such Unit at which time if the Unit is not leased, the leasing permit shall be revoked and the Owner shall automatically be placed at the bottom of the waiting list. Notwithstanding anything to the contrary herein, the issuance of a hardship leasing permit to an Owner shall not cause such Owner to be removed from the waiting list for a leasing permit.

Leasing permits are automatically revoked upon: (a) the sale or transfer of a Unit to a third party (excluding sales or transfers to an Owner's spouse); (b) the failure of an Owner to lease such Owner's Unit within ninety (90) consecutive days at any time after the issuance of such leasing permit; or (c) the occupancy of the Unit by the Owner.

8.3 Hardship Leasing Permits. If an Owner must lease such Owner's Unit to avoid an undue hardship, the Owner shall apply to the Board in writing for a hardship leasing permit. The Board may issue or deny requests for hardship leasing permits in its discretion after considering the following factors, which include, but are not limited to: (a) the nature, degree and likely duration of the hardship; (b) the harm, if any, which will result to the Community if the hardship leasing permit is approved; (c) the number of hardship leasing permits which have been issued to other Owners; (d) the Owner's role in causing the hardship or ability to cure the hardship; and (e) whether previous hardship leasing permits have been issued to the Owner.

A hardship hereunder shall include, but not be limited to, the following situations: (a) an Owner dies and the Unit is being administered by such Owner's estate; (b) an Owner must relocate outside metropolitan Atlanta and cannot, within six months from the date that the Unit was placed on the market, sell the Unit except at a price below the current appraised market value, after making reasonable efforts to do so; or (c) an Owner takes a leave of absence or temporarily relocates out of the metropolitan Atlanta area and intends to return to reside in the Unit within one year.

Hardship leasing permits shall be valid for a term not to exceed one (1) year. Owners may reapply for additional hardship leasing permits at the expiration of a hardship leasing permit in accordance with the procedures set forth herein.

8.4 Transient Rentals. Notwithstanding anything herein to the contrary, under no circumstances shall a Unit be leased, rented or used for short-term transient or hotel purposes or rented through short-term internet rental services, including, without limitation, VRBO, Airbnb, HomeAway, or such other similar rental services.

8.5 Leasing Provisions. Leasing authorized under this Article shall be governed by the following provisions:

(a) Notice. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board of Directors with the following information: (i) a copy of the fully executed lease agreement; (ii) the name of the lessee and all other people occupying the Unit; (iii) the phone number of the lessee; (iv) the Owner's address and telephone number other than at the Unit; and (v) other such information as the Board may reasonably require.

(b) General. Units may be leased only in their entirety; rooms, basements or fractions or portions of a Unit may not be leased without the prior written approval of the Board of Directors. All leases shall be in writing. There shall be no subleasing of Units or assignment of leases unless approved in writing by the Board of Directors. All leases must be for an initial term of at least one (1) year, except with written approval by the Board of Directors, which shall not be unreasonably withheld in cases of undue hardship. The Owner must provide the lessee with copies of the Declaration, Bylaws, and the rules and regulations and any architectural guidelines of the Association and the lease shall provide that the Owner has made available to the lessee copies of the Declaration, Bylaws, and the Association's rules and regulations and any architectural guidelines.

(c) Compliance; Liability for Assessments. If a Unit is leased or occupied in violation of this Article, then the Board of Directors shall be authorized, in addition to all other available remedies, to terminate the lease and occupancy, and to suspend all voting rights and the right to use and enjoy the Common Property, including, without limitation, the right to use and enjoy the Community recreational facilities, of the Owner and any unauthorized tenants(s) or Occupant(s). Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(i) Compliance with Declaration, Bylaws and Rules and Regulations and Architectural Guidelines. Lessee shall abide by and comply with all provisions of the Declaration, Bylaws, and rules and regulations and any architectural guidelines adopted pursuant thereto. Lessee shall control the conduct of all other Occupants and guests of the leased Unit in

order to ensure such compliance. The Owner agrees to cause all Occupants of such Owner's Unit to comply with the Declaration, Bylaws, and the rules and regulations and any architectural guidelines adopted pursuant thereto and is responsible for all violations caused by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any violation of the Declaration, Bylaws and rules and regulations and any architectural guidelines adopted pursuant thereto.

In the event that the lessee or a person living with the lessee violates the Declaration, Bylaws, or a rule or regulation or architectural guideline for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the provisions contained herein. If the fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit.

Any violation of the Declaration, Bylaws or rules and regulations and architectural Guidelines adopted pursuant thereto by the lessee, any Occupant, or any guest of the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law.

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

(iii) Right to Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property.

8.6 Mortgagee Exemption. The provisions of this Article shall not apply to any Mortgagee in possession of a Unit through foreclosure or otherwise as a result of the exercise of any rights arising out of a first priority Mortgage on a Unit.

**Article 9**  
**Insurance and Casualty Losses**

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

The Board of Directors shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million and No/100 Dollars (\$1,000,000.00). Policies may contain a reasonable deductible as determined by the Board of Directors.

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

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

9.2 Insurance Obtained by Unit Owners. By virtue of taking title to a Unit, each Owner acknowledges that the Association has no obligation to provide any insurance for any improvements to the Unit made by Declarant during the initial construction of the Unit, or made by the Owner thereafter, or to provide any insurance for any personal property of the Owner or Occupants, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall be responsible for obtaining and maintaining the following: (i) a liability policy covering damage or injury occurring on a Unit; (ii) insurance covering an Owner's or Occupant's personal property; and (iii) insurance covering the Unit to the extent not insured by policies maintained by the Association, including, without limitation, any betterments and improvements made to the residential dwelling located on a Unit which are installed by the

Declarant during the initial construction process at the request of a purchaser who has entered into a contract with Declarant to purchase such Unit or made by an Owner at any time thereafter. The policies required hereunder shall be in effect at all times.

### 9.3 Damage and Destruction.

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

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

9.4 Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who would be responsible for such loss in the absence of insurance. The Owner(s) shall be responsible for the full amount of the deductible under the Association's policy to the extent the same is not covered under such Owner's individual insurance policy. If the loss affects more than one Unit or a Unit and the Common Property, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total

costs of repair, unless the insurance policy provides that the deductible will apply to each Unit separately. If an Owner fails to pay the deductible when required hereunder, the Association can pay the deductible and assess the cost to such Owner as a specific assessment.

## Article 10 Easements

10.1 General. Each Unit shall be subject to those easements, if any, shown or set forth on the recorded subdivision plat for the Community, as amended from time to time, as well as the easements now or hereafter established by the Declarant and CND in this Declaration or by any other document recorded in the Office of Superior Court of Fulton County, Georgia.

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

(a) the right of the Association to suspend the right of an Owner to use and enjoy the Common Property, including, without limitation, the right the right to use and enjoy the Community recreational facilities, for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, rules and regulations or Architectural Guidelines;

(b) the right of the Association to deactivate any card access system, gate code or other method used in connection with the Gate System which restricts vehicular access to the Community for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, rules and regulations or Architectural Guidelines;

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

(d) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for constructing, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least two-thirds (2/3) of the Units (other than Declarant), the consent of Declarant, and so long as CND owns a Unit in the Community, the consent of CND, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Unit or other property located within the Community (Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the

exercise of any rights by the holder of such Mortgage in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Unit or other property located within the Community.);

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

(f) the right of the Association to transfer or convey all or any portion of the Common Property upon the approval of the Owners of at least two-thirds (2/3) of the Units, the consent of Declarant and, so long as CND owns a Unit, the consent of CND;

(g) the right of the Association, acting through the Board of Directors, without a vote of the members, but with the consent of the Declarant to enter into easement and cost sharing agreements to establish certain easements, covenants and obligations to benefit and/or burden all or a portion of the Community;

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

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

10.3 Easements for Encroachment and Overhang. There is hereby reserved to CND and granted to the Declarant for the benefit of each Unit a reciprocal appurtenant easement for encroachment and overhang between adjacent Units and between a Unit and adjacent Common Property due to the original construction or the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration); provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association, other than the Declarant in the original construction of the Units.

10.4 Easement for Utilities – Association and Declarant. There is hereby reserved to CND and granted to Declarant and the Association a blanket easement upon, across, above and under all property within the Community for access, ingress, egress, installing, altering, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television system, or security system which the Declarant, CND or the Association might decide to have installed to serve the Community. Declarant, CND, the Association or the designees of the foregoing, as the case may be, may install, repair, replace and maintain or authorize the installation, repair, replacement and maintenance of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request

a specific license or easement by separate recordable document, the Declarant, CND or the Board shall have the right to grant such easement. Owners shall not remove, relocate or interfere in any way with any previously installed utility lines and facilities.

10.5 Easement for Utilities - Unit Owner. CND hereby establishes for the benefit of each Unit a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cables, conduits, utility lines, utility facilities, flues and ducts serving such Unit and situated in, on or under any other Unit or the Common Property. Certain utility meters and facilities may be installed on the end of a building containing multiple Units and utility lines serving other Units may run across, over, under or through neighboring Units. Easements for all such utility lines and facilities are established by this Section 10.5 and Section 10.4 above. Further, air conditioning condensing units serving certain Units may be installed either wholly or partially on other Units or the Common Property and an easement for access to and installation, maintenance, repair, replacement and use of such air conditioning condensing units is established by this Section 10.5 and Section 10.4 above. In the event that any Owner desires access to another Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owner of such other Unit(s) at least two (2) days in advance of the date that access is needed and attempt to agree on a convenient date and time for access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a Unit to which access is needed under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Units, reasonable steps shall be taken to protect such Units and the property of the Owners and Occupants thereof, and damage shall be repaired by the Person causing the damage at its sole expense. Notwithstanding anything to the contrary herein, the Board of Directors, without a vote of the Owners, shall have the right, power and authority to grant permits, licenses, utility easements, and other easements under, through, or over the Units and/or the Common Property as may be reasonably necessary for the proper maintenance and/or ongoing operation of the Community.

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

10.7 Easement for Association Maintenance. CND hereby grants to the Association a perpetual easement across all Units and all other portions of the Community as may be

reasonably necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Units, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole cost and expense. Except in an emergency situation, entry to the residential dwelling located on a Unit shall only be during reasonable hours and after notice to the Owner.

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

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

10.10 Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, Architectural Guidelines, and amendments thereto, CND hereby reserves an easement across the Community for its benefit and for the benefit of Declarant to maintain and carry on, upon such portion of the Community as it may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant or CND may be required or convenient for Declarant's and CND's development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or any other property being developed by Declarant or CND, including, but not limited to: (a) the right to place or authorize the placement of marketing and directional signs on Units or right-of-way(s) at street intersections within the Community; (b) the right of access, ingress and egress for vehicular and

pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Unit; (c) the right to tie into any portion of the Community with streets, driveways, paths, parking areas and walkways; (d) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; (e) the right to grant easements over, under, in or on the Community, including without limitation the Units, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; (f) the right to convert Units (with the consent of the Owner thereof) to Common Property and/or streets; (g) the right to construct recreational facilities, utilities and other improvements on Common Property; (h) the right to carry on sales and promotional activities in the Community; (i) the right of Declarant, without the consent of any other Person, to revise and re-record the subdivision plat(s) of the Community, including, without limitation, creating and/or more specifically describing any Unit, changing any Unit or portion of a Unit to Common Property, changing any Common Property to a Unit, or creating a public or private street over all or any portion of a Unit or other property within the Community; provided, however, the boundary lines of any Unit not owned by Declarant as applicable, shall not be changed without the written consent of the Owner(s) and Mortgagee(s) of such Unit; and (i) the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. CND, Declarant or any builder approved by Declarant may use residences, offices or other buildings owned or leased by CND or Declarant as model residences and sales offices. This Section shall not be amended without the written consent of Declarant and CND until the rights of Declarant and CND have terminated as provided in Sections 11.5 and 11.6 hereof.

10.11 Easement for Private Streets, Alleys and Sidewalks. CND hereby grants, conveys, declares, creates, imposes and establishes a perpetual, non-exclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across the private streets, alleys and the sidewalks located within the Community. At such time as one or more subdivision plats for the property submitted to this Declaration are recorded in the real estate records of the Office of the Clerk of Superior Court of Fulton County, Georgia, any reference to the private streets and alleys shall then and thereafter mean a reference to the private streets and alleys as actually constructed and depicted on the recorded subdivision plat. The right-of-way easement herein granted shall permit joint usage of such easement by: (a) the Owners and Occupants; (b) the legal representatives, successors and assigns of the Owners; and (c) invitees and licensees of the Owners and Occupants. CND hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any right-of-way easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional non-exclusive easements to third parties, over, under and across the easement area. CND hereby reserves for the benefit of itself and Declarant and grants the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across those utility easement areas, private streets, alleys and sidewalks for the installation,

maintenance, and use of such private streets, alleys, sidewalks, grading for proper drainage of said private streets and alleys, and related activities and improvements.

Article 11  
General Provisions

11.1 Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations, Architectural Guidelines and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plat(s) for the Community and in the deed to such Owner's Unit, if any. The Declarant and Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments provided, however, only one fine may be imposed for a single violation such that an Owner or Occupant may not be fined by the Declarant and the Board of Directors for the same violation; and provided, further, Declarant or the Board, as the case may be, may count each day a violation continues after notice thereof as a separate violation. In the event fines or other sanctions are imposed by Declarant hereunder, Declarant shall have any and all rights to collect such fines or sanctions (which fines shall be payable to the Association) and any related charges, including, without limitation, attorney's fees actually incurred and costs of collection, in the same manner as provided herein for the collection of assessments by the Association acting through the Board.

Failure to comply with this Declaration, the Bylaws, Architectural Guidelines or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, including, without limitation, reasonable attorney's fees actually incurred, maintainable by the Association, the Declarant or an aggrieved Owner. Failure by the Declarant or the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or Architectural Guidelines, and to assess the cost of recording and removing such notice against the Unit of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

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

the same; or (b) extended, renewed, modified or terminated as otherwise provided herein or by applicable law.

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

11.4 Self-Help. In addition to any other remedies provided for herein, the Association, the Declarant or their respective duly authorized agents shall have the power to enter upon any Unit or any other portion of the Community to abate or remove any structure, improvement, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, the use restrictions or Architectural Guidelines. Unless an emergency situation exists, the violating Owner shall be given ten days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.

11.5 Termination of Rights of Declarant. The rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant no longer owns any property in the Community and Declarant no longer owns any property that can be annexed into the Community as provided herein and a certificate of occupancy has been issued for the residential dwelling located on each Unit in the Community; or (b) the date of recording by Declarant in the Fulton County, Georgia land records a written instrument terminating all of Declarant's rights hereunder; provided, however, so long as CND owns a Unit, such written instrument shall also be signed by CND in order to be effective.

11.6 Rights Reserved for the Benefit of CND.

(a) General. So long as CND owns a Unit, CND shall have the right to enforce any provisions of the Declaration, Bylaws and Articles that are intended to be for the benefit of CND.

(b) Termination of Rights of CND. The rights reserved for the benefit of CND under this Declaration shall automatically terminate and be of no further force and effect on the date that CND no longer owns any Units in the Community, which may be evidenced by filing a Notice of Termination or similar document in the Fulton County, Georgia land records.

### 11.7 Amendment.

(a) By Declarant. This Declaration may be amended unilaterally at any time and from time to time by Declarant if such amendment: (i) is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Units subject to this Declaration; or (iv) necessary to enable any governmental agency or private insurance company, including without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Units subject to this Declaration; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner to use such Owner's Unit without the consent of the affected Owner.

Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, such amendment shall not materially adversely affect the substantive rights of any Owner to use such Owner's Unit without the consent of the affected Owner.

(b) By the Board. The Board of Directors, with the written consent of the Declarant, and without a vote of the members may amend this Declaration: (i) to elect to be governed by and thereafter comply with the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220 *et seq.*; (ii) to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (iii) to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (iv) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Units subject to this Declaration; or (v) to enable any governmental agency or private insurance company, including without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Units subject to this Declaration; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner to use such Owner's Unit without the consent of the affected Owner.

(c) By the Members. In addition to the above, this Declaration may be amended upon the affirmative vote or written consent or any combination thereof of Owners of at least two-thirds (2/3) of the Units and the consent of Declarant.

(d) Consent of CND Required. So long as CND owns a Unit, any amendment to the Declaration shall require the prior written approval of CND, which consent shall not be unreasonably withheld, conditioned or delayed. Any amendment recorded in the land records

without such approval shall be deemed void and of no force and effect unless subsequently approved by a written consent signed by CND.

Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant and CND to any amendment shall be evidenced by the execution of said amendment by Declarant and CND, respectively. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given. The amendments authorized by this Section may be of uniform or non-uniform application and Owners shall be deemed to have agreed that the Declaration may be amended as provided herein and that any rule of law requiring unanimous approval of amendments having a non-uniform application shall not apply.

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

11.9 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and, to this end, the provisions of this Declaration are declared to be severable.

11.10 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

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

11.12 Preparer. This Declaration was prepared by Katharine A. Dyott, Dorough & Dorough, LLC, Attorneys at Law, 160 Clairemont Avenue, Suite 650, Decatur, Georgia 30030.

11.13 Notices. Except as otherwise specifically provided in such document(s), as the case may be, notices provided for in this Declaration or the Articles or Bylaws shall be in

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

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

11.15 Security. ALL OWNERS, OCCUPANTS, GUESTS, LICENSEES, AND INVITEES, AS APPLICABLE, ACKNOWLEDGE THAT DECLARANT, CND, THE ASSOCIATION AND ITS BOARD OF DIRECTORS DO NOT REPRESENT OR WARRANT THAT ANY SAFETY OR SECURITY MEASURES WILL BE IMPLEMENTED IN THE COMMUNITY OR, IF IMPLEMENTED, THAT SUCH SAFETY OR SECURITY MEASURES MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR THAT ANY SUCH SAFETY OR SECURITY MEASURES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THEY ARE DESIGNED. EACH OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT DECLARANT, CND, THE ASSOCIATION AND THE BOARD OF DIRECTORS ARE NOT INSURERS OR PROVIDERS OF SAFETY OR SECURITY AND SHALL HAVE NO DUTY TO PROVIDE ANY SAFETY OR SECURITY ON THE COMMON PROPERTY OR ANY OTHER PORTION OF THE COMMUNITY; AND THAT EACH OWNER, OCCUPANT, GUEST, LICENSEE, AND INVITEE ASSUMES ALL RISKS OF PERSONAL INJURY AND PROPERTY DAMAGE AND FURTHER ACKNOWLEDGES THAT DECLARANT, CND, THE ASSOCIATION AND THE BOARD OF DIRECTORS HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SAFETY OR SECURITY MEASURES IMPLEMENTED OR APPROVED.

11.16 Indemnification. To the fullest extent allowed by the Georgia Nonprofit Corporation Code, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but

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

11.17 Agreements. Subject to the prior approval of Declarant and CND, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

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

11.19 Notice of Sale or Acquisition. Prior to the sale of a Unit, the Owner shall provide the Association with written notice of the name of the purchaser and such other information as the Board may reasonably require. Upon acquisition of a Unit, each new Owner shall provide the Association with written notice of the name and mailing address of the Owner and such other information as the Board may reasonably require.

11.20 Conflict. In the event of a conflict between the provisions of this Declaration and the provisions of Georgia law, then to the extent that the provisions of Georgia law cannot be waived by agreement, Georgia law shall control.

11.21 Disclosures. Every Owner, by acceptance of a deed to a Unit, acknowledges that it will be subject to and bound by the terms and conditions of this Declaration, Bylaws, Architectural Guidelines and any rules and regulations adopted pursuant thereto.

Each Owner and Occupant also acknowledges the following:

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

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

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

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

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

(f) that Declarant will be constructing portions of the Community and adjacent property and may engage in other construction activities related to other portions of the development and such adjacent property. Such construction activities may, from time to time, produce certain conditions within or in the vicinity of the Community, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic, or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; (vii) temporary interruption of utilities; and/or (viii) other conditions that may threaten the security or safety of Persons in the Community. Notwithstanding the foregoing, each Owner agrees that such conditions in the Community resulting from construction activities shall not be deemed a nuisance or discomfort to Owner and shall not cause Declarant and its respective representatives or agents to be deemed in violation of any provision of this Declaration.

## Article 12

### Dispute Resolution and Limitation on Litigation

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

(a) Bound Parties. The Declarant, CND, the Association and its officers, directors, and committee members, Owners, and all other 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 herein in a good faith effort to resolve such Claim.

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

- (i) the interpretation, application, or enforcement of the Declaration, Bylaws or Articles of Incorporation (hereinafter referred to as the "Governing Documents");
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article 6 hereof, which shall not be subject to review.

Notwithstanding the foregoing, 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 12.2:

- (iv) any action brought by the Association to collect assessments or other amounts due from any Owners;
- (v) any action brought 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 this Declaration;
- (vi) any action that does not include the Declarant, an affiliate of the Declarant, or the Association as a party, if such action asserts a Claim that would constitute a cause of action independent of the Governing Documents;
- (vii) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 12.2;
- (viii) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 12.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article;
- (ix) any action brought by the Association to enforce the Governing Documents;
- (x) proceedings involving challenges to *ad valorem* taxation;
- (xi) counterclaims brought by the Association in proceedings against it;

(xii) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for goods or services to which the Association is a party; and

(xiii) any dispute, claim, grievance or action arising under or related to that certain option or sale contract between Declarant and CND, as may be amended from time to time.

## 12.2 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the Board, in accordance with Section 11.13 of this Declaration, 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. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually acceptable place and time to discuss the Claim. 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. If the Claim involves any portion of the Community, including, without limitation, the Common Property, Respondent and Respondent's representatives shall have full access to the portion of the Community that is subject to the Claim for the purpose of inspecting such portion of the Community. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the Community to take and complete corrective action.

(c) Settlement. Any settlement of the Claim through negotiation 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 proceedings to enforce such agreement without the need to comply again 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, court costs and reasonable attorneys' fees actually incurred.

(d) Binding Arbitration of Claims. If the parties have not resolved the Claim through negotiation within ninety (90) days of the date of the Notice (or within such other agreed upon period), the Claimant shall have thirty (30) additional days to submit the Claim to arbitration in accordance with this Subsection.

(i) Arbitrator. A company actively involved in the dispute resolution business and mutually agreeable to all parties shall conduct the arbitration. In the event all parties cannot agree on an arbitration company, the arbitration shall be conducted by and through the American Arbitration Association. All arbitrations shall be conducted by a single arbitrator appointed by the applicable arbitration company.

(ii) General Rules. The arbitration hearing shall be conducted in the metropolitan Atlanta, Georgia area. All claims and causes of actions of all persons and entities entitled to enforce (or bound by) this arbitration provision shall be asserted in a single arbitration proceeding, and multiple parties may be joined in the arbitration proceeding so that all disputes may be resolved in one forum. No claim or cause of action may be asserted that would be barred by the statute of limitations or the statute of repose.

(iii) Discovery Rules. In any arbitration proceeding, requests for production of documents may be served by each party, and non-privileged, responsive documents that would be discoverable under Rule 34 of the Federal Rules of Civil Procedure (were the claims and causes of action being asserted in the United States District Court) shall be produced. Depositions may be taken as allowed by the arbitrator, which arbitrator shall reasonably limit the number of depositions in order to avoid unnecessary or excessive expense, delay or harassment.

(iv) Arbitrator's Decision. The arbitrator shall be instructed to issue a written decision identifying with specificity each claim or cause of action asserted or resolved in any arbitration, and the legal principles of *res judicata* and collateral estoppel shall be applicable to any arbitration award. Any arbitration award may be confirmed and enforced in any court of competent jurisdiction.

(v) Enforceability. This arbitration provision is expressly intended to benefit and be enforceable by each Person referenced in this Article whether or not such Person is bound by this arbitration provision. Any attempt by any such Person to enforce this arbitration provision shall constitute conclusive evidence of its intent to be bound hereby. Any portion of this provision that may be held to be unenforceable shall be severable from the balance of this provision so that the remainder of this provision shall remain in full force and effect.

(vi) Acknowledgement. BY ACCEPTANCE OF A DEED TO A UNIT, EACH OWNER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE FOREGOING AND AGREES TO SUBMIT ANY DISPUTES OR CLAIMS OR

**CONTROVERSIES ARISING OUT OF THE MATTERS INCLUDED WITHIN THIS ARTICLE TO BINDING ARBITRATION AS SPECIFIED HEREIN.**

**12.3 Initiation of Proceedings by Association.** In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not commence or prosecute any Claim unless first approved by at least seventy-five percent (75%) of the Total Association Vote, which approval must be accompanied by the approval of a reasonable arbitration budget and the approval of a special assessment in an amount equal to the arbitration budget to be levied equally among the Units and collected before commencement of any action. This Section shall not apply to those actions exempted in Section 12.1(b)(iv) – (xiii). This Section shall not be amended unless such amendment is made unilaterally by the Declarant as provided herein or is approved by the percentage of votes necessary to institute proceedings as provided above.

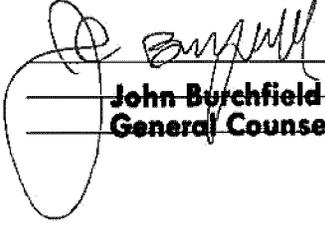
**12.4 Disputes Between Owners.** Unless otherwise required under the Declaration, the Association is not responsible for resolving, nor is it obligated to serve as an intermediary with respect to, dispute between Owners. Owners are encouraged to utilize alternative dispute resolution procedures in an attempt to resolve disputes with other Owners.

**12.5 Contractor Disputes Disclosure.** GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED, OR REPAIRED YOUR HOME. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

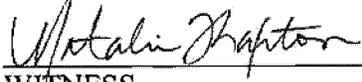
The term "Contractor," as used in this subparagraph, shall include Declarant and all other parties defined as "Contractor" in O.C.G.A. Section 8-2-36(5).

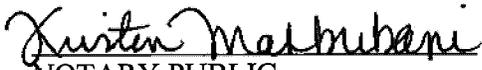
IN WITNESS WHEREOF, the Declarant herein hereby executes this Declaration under seal, this 11<sup>th</sup> day of November, 2019.

DECLARANT: **WEEKLEY HOMES, LLC**, a Delaware limited liability company

By:  (SEAL)  
Print Name: **John Burchfield**  
Title: **General Counsel**

Signed, sealed, and delivered in the presence of:

  
WITNESS

  
NOTARY PUBLIC

My Commission Expires: 7-3-2023

[AFFIX NOTARY SEAL]



IN WITNESS WHEREOF, CND, as the owner of all or a portion of the tract or parcel of land described on Exhibit "A" attached hereto, does hereby declare and consent, on behalf of CND and its heirs, successors, legal representatives, successors-in-title and assigns, that from and after the date hereof the property described on Exhibit "A" attached hereto shall be owned, held, transferred, sold, conveyed, used, occupied, and encumbered subject to all of the terms, provisions, covenants, restrictions and easements contained in the Declaration.

CND: **CND-LOWE LANE, LLC**, a Georgia limited liability company

By: *[Signature]* DM Weekley, Inc., a Delaware corporation, its sole Manager

By: *[Signature]*  
Print Name: **Heather Humphrey**  
Title: **Chief Financial Officer**

[CORPORATE SEAL]

Signed, sealed, and delivered in the presence of:

*[Signature]*  
WITNESS

*[Signature]*  
NOTARY PUBLIC

My Commission Expires: 7-3-2023

[AFFIX NOTARY SEAL]



**CONSENT AND SUBORDINATION OF LENDER**

The undersigned, **FLAGSTAR BANK, FSB**, a federally chartered savings bank ("Lender"), is the owner and holder of that certain Deed to Secure Debt and Security Agreement from **CND-Lowe Lane, LLC**, a Georgia limited liability company, to Lender, dated November 19, 2018, recorded November 19, 2018 in Deed Book 59448, Page 465, *et seq.*, Fulton County, Georgia land records (hereinafter, as amended, supplemented, and/or modified, referred to as the "Security Instrument").

Lender hereby consents to and subordinates the Security Instrument to the foregoing Declaration of Protective Covenants, Conditions, Restrictions and Easements for Ashbury to which this Consent and Subordination is attached (as may be amended from time to time, the "Declaration"), and Lender agrees that all of its right, title and interest in and to the real property described therein by virtue of the Security Instrument shall be bound by, subject to and subordinate to the easements and other terms and provisions of the foregoing Declaration, and the foregoing Declaration shall survive any foreclosure, deed in lieu of foreclosure and/or exercise of any remedy by Lender pursuant to the Security Instrument or any other instrument that Lender holds; provided, however, that nothing herein shall modify, alter or amend the Security Instrument as between Lender and the borrower thereunder.

**IN WITNESS WHEREOF**, the undersigned has caused this Consent and Subordination of Lender to be duly executed and sealed, as of this 12 day of November, 2019.

Signed, sealed and delivered  
in the presence of:

**FLAGSTAR BANK, FSB**, a federally  
chartered savings bank

[Signature]  
Unofficial Witness

By: [Signature]

Name: Jerry C. Schillaci

Title: Vice President

[Signature]  
Notary Public

My Commission Expires: 1-28-22

[BANK SEAL]

[AFFIX NOTARY SEAL]

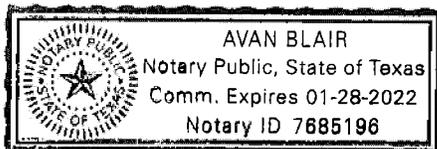


EXHIBIT "A"  
Legal Description

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 522 & 523, of the 1st District, 2nd Section Fulton County, Georgia and being more particularly described as follows:

To find the TRUE POINT OF BEGINNING, commence at a point at the Intersection of the northwest right-of-way line of Old Roswell Rd (65' R/W) and the southwest right-of-way line of Lowe Lane (50' R/W); thence continuing along the right-of-way of Old Roswell Road 25.01 feet along an arc of a curve to the left, said curve having a radius of 1,197.23 feet and a chord bearing and distance of South 65 degrees 23 minutes 14 seconds West 25.01 feet to a point at the center of Lowe Lane; thence leaving the right-of-way line of Old Roswell Road and following the centerline of Lowe Lane 52.87 feet along an arc of a curve to the right, said curve having a radius of 5,902.63 feet and a chord bearing and distance of North 22 degrees 40 minutes 31 seconds West 52.87 feet to a point; thence 42.10 feet along an arc of a curve to the right, said curve having a radius of 439.90 feet and a chord bearing and distance of North 19 degrees 20 minutes 07 seconds West 42.08 feet to a point; thence leaving the centerline of Lowe Lane South 73 degrees 31 minutes 30 seconds West a distance of 24.66 feet to a point; thence South 82 degrees 08 minutes 32 seconds West a distance of 54.06 feet to a point; thence North 87 degrees 25 minutes 31 seconds West a distance of 150.61 feet to a point; thence North 87 degrees 25 minutes 31 seconds West, a distance of 34.39 feet to a point on the Land Lot line common to Land Lots 504 & 523, and the property now or formerly owned by DRA Grande Oaks, LLC; thence along said Land Lot line and the Land Lot common to Land Lots 505 & 522, and the property now or formerly owned by Roswell Commons North 01 degrees 02 minutes 03 seconds East a distance of 768.53 feet to a point and the property now or formerly owned by APG Mansell LLC; thence along leaving said Land Lot line South 88 degrees 57 minutes 57 seconds East a distance of 724.80 feet to a point and the property now or formerly owned by City of Alpharetta; thence South 01 degrees 02 minutes 33 seconds West a distance of 328.54 feet to a point and the property now or formerly owned by Macaluso Family Real Estate LLC; thence South 01 degrees 14 minutes 28 seconds West a distance of 174.20 feet to a point and the property now or formerly owned by Sarah L. Winner; thence South 01 degrees 06 minutes 41 seconds West a distance of 199.91 feet to a point on the northwesterly right-of-way line of Old Roswell Road; thence along said right-of-way line the following courses and distances: South 74 degrees 18 minutes 16 seconds West a distance of 324.35 feet to a point; thence 100.71 feet along an arc of a curve to the left, said curve having a radius of 1,197.23 feet and a chord bearing and distance of South 68 degrees 23 minutes 44 seconds West 100.68 feet to a point and the TRUE POINT OF BEGINNING.

Said tract containing 12.816 acres.

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

All that tract or parcel of land lying and being in Land Lots 504, 505, 522, and 523 of the 1st District, 2nd Section, Fulton County, Georgia.

EXHIBIT "C"

BYLAWS

OF

ASHBURY TOWNHOME ASSOCIATION, INC.

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

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BYLAWS  
OF  
ASHBURY TOWNHOME ASSOCIATION, INC.  
- TABLE OF CONTENTS -

	<u>Page Number</u>
<b>ARTICLE 1 <u>NAME, MEMBERSHIP, APPLICABILITY AND DEFINITIONS</u></b> .....	<b>1</b>
1.1 <u>NAME</u> .....	1
1.2 <u>MEMBERSHIP</u> .....	1
1.3 <u>DEFINITIONS</u> .....	1
<b>ARTICLE 2 <u>ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES</u></b> .....	<b>1</b>
2.1 <u>PLACE OF MEETINGS</u> .....	1
2.2 <u>ANNUAL MEETINGS</u> .....	1
2.3 <u>SPECIAL MEETINGS</u> .....	1
2.4 <u>RECORD DATE</u> .....	2
2.5 <u>NOTICE OF MEETINGS</u> .....	2
2.6 <u>WAIVER OF NOTICE</u> .....	2
2.7 <u>ADJOURNMENT OF MEETINGS</u> .....	2
2.8 <u>MEMBERSHIP LIST</u> .....	2
2.9 <u>VOTING</u> .....	3
2.10 <u>PROXIES</u> .....	3
2.11 <u>QUORUM</u> .....	3
2.12 <u>ACTION BY WRITTEN CONSENT</u> .....	3
2.13 <u>ACTION BY WRITTEN BALLOT</u> .....	4
<b>ARTICLE 3 <u>BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS</u></b> .....	<b>4</b>
3.1 <u>GOVERNING BODY: COMPOSITION</u> .....	4
3.2 <u>DIRECTORS APPOINTED BY DECLARANT</u> .....	4
3.3 <u>NUMBER OF DIRECTORS</u> .....	4
3.4 <u>NOMINATION OF DIRECTORS</u> .....	4
3.5 <u>ELECTION AND TERM OF OFFICE</u> .....	5
3.6 <u>REMOVAL OF DIRECTORS</u> .....	5
3.7 <u>VACANCIES</u> .....	5
3.8 <u>ORGANIZATION MEETINGS</u> .....	5
3.9 <u>REGULAR MEETINGS</u> .....	5
3.10 <u>SPECIAL MEETINGS</u> .....	5
3.11 <u>WAIVER OF NOTICE</u> .....	6
3.12 <u>QUORUM OF BOARD OF DIRECTORS</u> .....	6
3.13 <u>COMPENSATION</u> .....	6
3.14 <u>OPEN MEETINGS</u> .....	6
3.15 <u>EXECUTIVE SESSION</u> .....	6
3.16 <u>ACTION WITHOUT A FORMAL MEETING</u> .....	6
3.17 <u>TELEPHONIC PARTICIPATION</u> .....	6
3.18 <u>POWERS</u> .....	7
3.19 <u>MANAGEMENT AGENT</u> .....	8
3.20 <u>BORROWING</u> .....	8
3.21 <u>FINING PROCEDURE</u> .....	8

**ARTICLE 4 OFFICERS.....9**

4.1 OFFICERS.....9

4.2 ELECTION, TERM OF OFFICE, AND VACANCIES.....9

4.3 ADDITIONAL OFFICERS AND AGENTS .....9

4.4 SALARIES .....9

4.5 REMOVAL.....9

4.6 PRESIDENT.....9

4.7 VICE PRESIDENT.....10

4.8 SECRETARY .....10

4.9 TREASURER .....10

4.10 RESIGNATION.....10

**ARTICLE 5 COMMITTEES.....10**

**ARTICLE 6 MISCELLANEOUS.....11**

6.1 FISCAL YEAR.....11

6.2 PARLIAMENTARY RULES .....11

6.3 CONFLICTS .....11

6.4 ELECTRONIC RECORDS, SIGNATURES AND DOCUMENTS .....11

6.5 AMENDMENT.....11

BYLAWS  
OF  
ASHBURY TOWNHOME ASSOCIATION, INC.

Article 1  
Name, Membership, Applicability and Definitions

1.1 Name. The name of the corporation shall be Ashbury Townhome Association, Inc. (hereinafter sometimes referred to as the "Association").

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

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

Article 2  
Association: Meetings, Quorum, Voting, Proxies

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

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

2.3 Special Meetings. The President or the Board of Directors may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association upon the delivery of a petition signed and dated by members entitled to cast at least fifteen percent (15%) of the Total Association Vote and describing the purpose or purposes for which it is to be held. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose(s) thereof. No business shall be transacted at a special meeting, except those matters that are within the purpose or purposes described in the notice.

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

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

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

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

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

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

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

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

2.11 Quorum. The presence, in person or by proxy, of members entitled to cast at least fifteen percent (15%) of the votes entitled to be cast at the meeting shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

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

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

### Article 3

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

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

3.2 Directors Appointed by Declarant. The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (a) the date on which all of the Units planned by Declarant to be a part of the Community shall have been improved with a dwelling and conveyed to an Owner for occupancy as a residence; or (b) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. The directors appointed by the Declarant need not be Owners or residents in the Community.

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

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

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

3.6 Removal of Directors. At any annual, regular or special meeting of the Association, any one (1) or more of the members of the Board of Directors elected by the members may be removed, with or without cause, by a majority of the Total Association Vote and a successor may then and there be elected to fill the vacancy thus created. The notice of the meeting shall state that the purpose or one of the purposes of the meeting is removal of a director. A director whose removal by the members has been proposed shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the remaining directors. This Section shall not apply to directors appointed by the Declarant.

3.7 Vacancies. Vacancies in the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the majority of the remaining directors. Each Person so selected shall serve the unexpired portion of the term. This Section shall not apply to directors appointed by Declarant.

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

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

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

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

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

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

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

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

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

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

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

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

(a) preparing and adopting an annual budget in which there shall be established the contribution of each member to the common expenses;

(b) making assessments to defray the common expenses and establishing the means and methods of collecting such assessments;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending rules and regulations;

(g) opening bank accounts on behalf of the Association and designating the signatories required;

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations and Architectural Guidelines adopted by it, and bringing any proceedings which may be instituted on behalf of or against the members concerning the Association, which enforcement power shall include, without limitation, the power to levy fines as provided herein and in the Declaration in such amounts as from time to time the Board may deem proper in the circumstances, counting each day a violation continues after notice from the Board as a separate violation;

(i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

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

(k) authorizing contracts on behalf of the Association.

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

3.20 Borrowing. The Board of Directors shall have the power to borrow money without the approval of the members of the Association; provided, however, after Declarant's right to appoint and remove the members of the Board has expired pursuant to Section 3.2 hereof, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the total amount of such borrowing exceeds or would exceed ten percent (10%) of the annual budget of the Association.

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

(a) Written notice shall be delivered to the member in accordance with Article 11, Section 11.13 of the Declaration to the address of the member shown on the Association's records, specifying:

(1) the nature of the violation, the fine to be imposed and the date, not less than ten (10) days or, in the event of an unapproved sign, twenty-four (24) hours, from the date of the notice, that the fine will take effect;

(2) that the violator may, within ten (10) days or, in the event of an unapproved sign, twenty four (24) hours, from the date of the notice, request a hearing in writing regarding the fine imposed;

(3) the name, address and telephone number of a person to contact to challenge the fine;

(4) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and

(5) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days or, in the event of an unapproved sign, twenty-four (24) hours, of the date of the notice.

(b) If a hearing is requested within the requisite time provided above, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the

hearing. No fine shall be imposed prior to the date that is five (5) days or, in the event of an unapproved sign, twenty-four (24) hours, after the date of the hearing, as applicable.

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

#### Article 4 Officers

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

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

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

4.4 Salaries. The officers shall receive no compensation.

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

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

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

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

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

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

## Article 5 Committees

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

Article 6  
Miscellaneous

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

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

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

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

6.5 Amendment.

(a) By the Board. These Bylaws may be amended by the Board of Directors with the consent of the Declarant and Approved Builder if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) enable any title insurance company to issue title insurance coverage with respect to the Units subject to the Declaration; (c) enable an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase Mortgage loans on the Units subject to the Declaration; (d) enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Units subject to the Declaration; or (e) comply with the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.*

(b) By the Declarant. Declarant may unilaterally amend these Bylaws for any purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner to use such Owner's Unit without the consent of the affected Owner. Any such amendment shall require the prior consent of Approved Builder in order to be effective.

(c) By the Members. In addition, these Bylaws may be amended upon the affirmative vote, written consent or any combination of affirmative vote and written consent of at least two-thirds (2/3) of the Total Association Vote and the consent of Declarant and Approved Builder.