

After Recording, Return to:  
Brian P. Cain, Esq.  
Holt Ney Zatcoff & Wasserman, LLP  
100 Galleria Parkway  
Suite 1800  
Atlanta, Georgia 30339

**MASTER DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR WEST VILLAGE**

THIS MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR WEST VILLAGE, dated as of the 19<sup>th</sup> day of December, 2019, is made by **BRANCH WEST VILLAGE III, LP**, a Delaware limited partnership ("**Branch**" or "**Declarant**"), and **WEST VILLAGE ASSOCIATES, LLC**, a Georgia limited liability company ("**WV Associates**").

**WITNESSETH:**

WHEREAS, Branch is the owner of certain property shown as Parcel 2 (the "**Multifamily Parcel**") on that certain Lot Reconfiguration Plat for West Village – Phase III, prepared by Michael C. Sanford, Georgia Registered Land Surveyor No. 3179 of Planners and Engineers Collaborative, filed June 11, 2018, recorded in Plat Book 277, page 448, Cobb County, Georgia records (the "2018 Plat");

WHEREAS, WV Associates is the owner of certain property shown as Parcel 5 on the 2018 Plat and Parcel 4 as shown on that certain Lot Reconfiguration Plat for West Village – Phase III, prepared by Michael C. Sanford, Georgia Registered Land Surveyor No. 3179 of Planners and Engineers Collaborative, filed August 7, 2019, recorded in Plat Book 278, page 505, Cobb County, Georgia records (the "2019 Plat") (Parcels 4 and Parcel 5 being collectively referred to herein as the "**Townhome Property**");

WHEREAS, WV Associates is the owner of certain property shown as Parcel 3 on the 2019 Plat (the "**Single Family Property**," and collectively with the Multifamily Parcel and the Townhome Property, the "**Property**");

WHEREAS, Branch and WV Associates desire to subject the Property to the terms and conditions of this Declaration for the purpose of protecting the value of the Property, ensuring the proper development of the Property, and delegating the maintenance of the Property;

NOW, THEREFORE, Branch and WV Associates hereby declare that the Property is now and shall be hereafter owned, held, developed, conveyed, leased, maintained, occupied, and mortgaged subject to the protective covenants, conditions, restrictions, and easements hereinafter set forth in this Declaration, and every grantee of any interest in the Property, by acceptance of a deed or other conveyance, whether or not such deed or other conveyance shall be signed by such grantee and whether or not such grantee shall otherwise consent in writing, shall take subject to this Declaration and shall be deemed to have assented to and agreed to the same.

## **ARTICLE 1** **DEFINITIONS**

1.1 **Certain Defined Terms.** All capitalized terms and phrases shall have the meanings ascribed to them in **Exhibit A** hereto.

## **ARTICLE 2** **PURPOSE OF THIS DECLARATION**

2.1. **Purpose.** The purpose of this Declaration is to ensure the proper use and appropriate development, improvement, and management of the Property so as to provide a harmonious development that will promote the general welfare of the Owners and Occupants thereof and will protect the present and future value of the Property and all parts thereof; and to preserve the architectural integrity, aesthetic appearance, and economic value of the Property and the Improvements constructed thereon from time to time.

2.2. **Run With the Land.** This Declaration and all of the provisions hereof are and shall be real covenants running with the Property and shall burden and bind the Property for the duration hereof. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of the Property shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Declaration, and in accepting such interest or estate in, or a security interest with respect to, any portion of the Property, such Person shall be deemed to have consented to this Declaration and all of the terms, provisions, and conditions hereof.

## **ARTICLE 3** **EASEMENTS**

3.1. **Easements Established by Building Site Declarations.** The Parcels shall be subject to any and all access, construction, utility, drainage, slope and support, signage and other easements as set forth in the Building Site Declarations that encumber such Parcels.

3.2. **Dedication and Transfer of Easements for Utilities and Roadways.** To the extent required by Applicable Law, and as requested by the parties to the Building Site Declarations, Declarant shall join in, cooperate and execute any instruments and agreements required to dedicate all or any part of the rights of way, streets, ways, sanitary sewer lines and facilities, water lines and facilities, utilities, and any of the easements described in, reserved and established by this Declaration and/or the Building Site Declarations to the appropriate Government Authority.

3.3. Installation, Maintenance and Repair. Any and all construction, installation, repair, replacement, relocation and maintenance of any such rights of way, streets, ways, sanitary sewer lines and facilities, water lines and facilities, utilities, and any of the easements described in, reserved and established by this Declaration and/or the Building Site Declarations shall be governed by the Building Site Declaration (and the Sub-Association thereunder) applicable to such rights of way, streets, ways, sanitary sewer lines and facilities, water lines and facilities, utilities, and any of the easements.

#### **ARTICLE 4**

##### **MASTER OWNERS' ASSOCIATION**

4.1. Establishment. On or prior to the effective date of this Declaration, Declarant shall establish the Master Owners' Association as an association consisting of (a) Declarant, as a Class B Member, (b) the Owner of the Townhome Property as a Class A Member, and (c) the Owner of the Single Family Property as a Class A Member, all in accordance with the provisions of the Georgia Nonprofit Corporation Code and this Declaration; provided, however, that effective immediately upon the formation of the Sub-Association for the Townhome Property and the formation the Sub-Association for the Single Family Property, each such Sub-Association shall automatically become Class A Members of the Master Owners' Association, such that the only members of the Master Owners' Association shall be Declarant, as a Class B Member, and each Sub-Association, as a Class A Member.

4.2. Purpose. The Master Owners' Association is formed to ensure the maintenance and improvement of the Property and to undertake such other activities as are related to maintaining the Property as a desirable development for the members of the Master Owners' Association.

4.3. Powers and Duties. The powers and duties of the Master Owners' Association shall include those set forth in the By-Laws and Articles of Incorporation, as amended from time to time. In addition, the Master Owners' Association shall have all the powers and duties granted to or imposed upon it by this Declaration, and all the powers and duties granted to or imposed upon the Sub-Associations under the Building Site Declarations (which the Master Owners' Association may choose to exercise as it deems reasonably necessary). In the event of conflict among the powers and duties of the Master Owners' Association or the terms and provisions of this Declaration and the exhibits attached hereto, this Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations, all as amended from time to time.

#### 4.4. Voting.

##### 4.4.1 Classes of Membership.

- (a) Class A Members shall mean the Class A Members set forth in Section 4.1 hereof.
- (b) Class B Member shall mean the Declarant and if applicable, any Successor Declarant. The Class B membership shall terminate only at such time as (i) the Class B Member so designates by recording a document to such effect in the Cobb County, Georgia land records and delivering a copy of the same to the Master Owners' Association, or (ii) the Class B Member no longer holds a Property Interest.

4.4.2 Voting Rights: Class B Member. The Class B Member shall have one (1) vote for each residential apartment unit located on the Property owned, operated or governed by such Member.

4.4.3 Voting Rights: Class A Members. Each Class A Member shall have one (1) vote for each residential unit (single family or townhome, as the case may be) located on the Property owned, operated or governed by such Member. Upon the formation of the Sub-Association for the Townhome Property and the Sub-Association for the Single-Family Property, the president of each Sub-Association shall be entitled to cast all votes applicable to the Townhome Property and Single Family Property, as the case may be.

4.5. Delegation to Sub-Associations. Upon the written consent of a Sub-Association, the Master Owners' Association shall have the authority to delegate to such Sub-Association such duties of the Master Owners' Association as may be determined by the Board.

4.6. Limitation on Liability. Subject to any applicable requirement of a Governmental Authority, neither Declarant nor the Master Owners' Association, or any director, officer, manager, member, agent, or employee thereof, as the case may be, shall be liable to any Owner or Occupant or to any other Person for any loss, damage or injury, or claim thereof, arising out of or in any way connected with the performance or nonperformance of the Master Owners' Association's duties under this Article 4 unless due to the willful misconduct, gross negligence, bad faith, or fraud of Declarant or the Master Owners' Association, or any director, officer, manager, member, agent or employee thereof, as the case may be.

4.7. Directors' and Officers' Insurance. The Master Owners' Association shall purchase and maintain, as a Common Expense, as defined in Section 5.1 hereof, directors' and officers' insurance on behalf of any person who is or was a director or officer of the Master Owners' Association against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such.

## **ARTICLE 5**

### **ASSESSMENTS AND COSTS**

5.1. Common Expenses. Each Owner, by accepting a deed for any portion of the Property or otherwise being deemed an "Owner" for purposes of this Declaration, covenants and agrees to pay to the Master Owners' Association all of those expenses and costs associated with and related to the operation and management of the Master Owners' Association ("Common Expenses"), as provided by this Declaration; provided, members of the Sub-Association for the Single Family Property shall not be required to pay any Common Expenses. Each Owner's pro rata share of Common Expenses shall be calculated by dividing the number of units constructed (or under construction) on such Owner's Building Site by the number of units constructed (or under construction) on the overall Property. Notwithstanding the foregoing, in the event the Common Expenses are less than One Hundred Dollars (\$100.00) in any calendar year, the owner of the Multifamily Parcel shall pay such expenses and not seek reimbursement from the other Owners.

5.2. Violation of Declaration. The Board may impose a special charge on an Owner to pay the cost to correct a violation by said Owner or any of its Permittees of the Declaration, after said Owner has received written notice from the Master Owners' Association of such violation and reasonable opportunity to cure. Such charge shall (a) be a charge and continuing lien on the affected Building Site, (b) be an obligation of the Owner of the Building Site at the time when the charge becomes due and an obligation of all subsequent Owners of said Building Site until paid, and (c) may be enforced in any manner provided by law or in this Declaration.

5.3. Utilities. Each Owner shall pay for said Owner's own use of any and all utilities.

5.4. Taxes. Each Owner shall pay, or cause to be paid, prior to delinquency, all taxes and assessments with respect to its Building Site and the improvements located thereon, and any personal property owned or leased by such Owner. With respect to property encumbered by a Building Declaration, the respective Sub-Association shall only be responsible for the payment of all taxes and assessments for any real and/or personal property owned or leased by such Sub-Association.

5.5. Sub-Associations.

5.5.1 Each Sub-Association shall collect and remit to the Master Owners' Association all sums due hereunder to the Master Owners' Association from the members of such Sub-Association.

5.5.2 Each Sub-Association for a Building Site shall be liable and responsible to the Master Owners' Association hereunder for its and its constituents' compliance with the covenants, restrictions and requirements of this Declaration and the Articles of Incorporation, By-Laws, and rules and regulations of the Master Owners' Association. Accordingly, while the Master Owners' Association shall have the right (exercisable at its sole option) to proceed against such a constituent for a violation of this Declaration, it shall have a direct right to do so against the applicable Sub-Association.

5.5.3 Each Sub-Association for a Building Site shall be deemed the "Owner" of the Building Site for purposes of the Master Owners' Association, but its constituents shall not be deemed to be "Owners" for voting or any other purposes.

## **ARTICLE 6**

### **CONTROL AND LAND-USE**

6.1. Zoning Conditions. The Owners acknowledge and agree that the Property is subject to all Zoning Conditions (as may be amended, supplemented or modified from time to time) and shall be subject to the restrictions outlined in this Article.

6.2. Prohibited Uses: The following uses shall be prohibited on the Property: (a) adult-themed bookstores; (b) automotive sales, leasing, repair, and/or service facilities; (c) gas stations and self-service gas stations that sell gas and convenience stores; (d) truck and trailer leasing facilities; (e) automotive paint and body repair shops; (f) adult entertainment business; and (g) nightclubs and bars, except that same would be permitted within a restaurant or hotel provided that they are an integral part of a restaurant operation.

6.3. Buildings. No Building shall be constructed on any Building Site unless approved by the Approving Authority in accordance with Article 7 hereof. No proposed work shall be initiated, or permitted to be initiated, by any Owner on its Building Site unless and until all Proposed Plans shall have been approved by the Approving Authority in accordance with Article 7 hereof.

6.4. Use Restrictions. The Approving Authority shall have the sole and exclusive right and authority to designate the Property Use for any Building Site. No Property Use shall be engaged in and no change shall be made in any Property Use designated and approved by the Approving Authority in any Building Site Declaration unless and until all plans for such Property Use or such change in Property Use shall have been approved by the Approving Authority pursuant to the terms and provisions hereof. No temporary Buildings or other temporary Improvements shall be permitted on any Building Site unless otherwise approved by the Approving Authority.



6.5. **Maintenance.** Each Owner shall be responsible for keeping, or for causing to be kept, its Building Site (whether or not improved), Buildings, and other Improvements in a safe, clean, neat, and orderly condition. Each such Sub-Association shall enforce the maintenance obligations of each member thereof with respect to the Building Sites governed by such Sub-Association, as may be set forth in the applicable Building Site Declaration.

## **ARTICLE 7** **APPROVAL OF PLANS**

7.1.1 Each Sub-Association may implement architectural rules and regulations governing the nature, kind, color, shape, height, materials and location of Buildings and Improvements located on the Building Site governed by such Sub-Association and shall enforce all Zoning Conditions against its members; provided, however, that the rules and regulations of such Sub-Association shall not be contrary to or conflict with the Zoning Conditions. No Building shall be constructed on any Building Site unless approved by the Approving Authority.

## **ARTICLE 8** **DURATION, MODIFICATION, AND TERMINATION**

### 8.1. **Duration.**

8.1.1 The provisions of this Declaration shall run with and bind title to the Property and shall be binding upon and inure to the benefit of Declarant, the Master Owners' Association, the Sub-Associations and all Owners, Occupants, and Mortgagees, and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect perpetually, to the extent permitted by Georgia law. In the event that Georgia law limits the period during which covenants restricting lands to certain uses to twenty (20) years, any provisions of this Declaration affected thereby shall run with and bind the Property for a period of twenty (20) years from the date this Declaration is filed in the real property records of Cobb County, Georgia, after which time such provisions shall be automatically extended, if permitted by Georgia law, for successive periods of twenty (20) years, unless an instrument, signed by members of the Master Owners' Association holding not less than seventy-five percent (75%) of the total votes in the Master Owners' Association has been recorded in the real property records of Cobb County, Georgia, agreeing to terminate such provisions in whole or in part.

8.1.2 Notwithstanding anything in this Section to the contrary, to the extent the Declarant or the Master Owners' Association, as applicable, conveys and/or dedicates any portion of the Property for right-of-way purposes to any Governmental Authority, the terms, conditions, and provisions of this Declaration shall automatically cease to be applicable to or affect such areas so conveyed and/or dedicated.

### 8.2. **Amendment.**

8.2.1 Except as otherwise provided in Sections 8.2.2 and 8.2.3 hereof, and any requirement of a Governmental Authority, this Declaration may be amended at any time and from time to time by (i) the members of the Master Owners' Association holding not less than fifty-one percent (51%) of the total votes in the Master Owners' Association, voting in person or by proxy at a meeting duly called and held for such purpose, and (ii) Declarant, so long as Declarant holds a Property Interest in the Property. Notwithstanding anything to the contrary contained in this Section 8.2, however, this Declaration may not be amended, unless the subject amendment is approved by and consented to by the Owner(s) of the Building Site(s) so affected, if such amendment would have the effect of (a) materially

and adversely affecting the value and marketability of any Building Site; (b) materially and adversely affecting the means of ingress and egress to and from any Building Site; (c) materially increasing the cost of the construction and development of the Improvements on any Building Site, which construction and development of said Improvements have been previously approved by the Declarant, the Master Owners' Association, or the applicable Sub-Association pursuant to the terms and provisions of this Declaration; (d) materially altering or changing the design and/or layout plans for the Improvements proposed to be constructed and developed on any Building Site as such plans have been previously approved by the Declarant, the Master Owners' Association, or the applicable Sub-Association pursuant to the terms and provisions of the applicable Building Site Declaration; (e) materially and adversely delaying an Owner's ability to develop its Building Site in accordance with plans that have been previously approved by the Declarant, the Master Owners' Association, or the applicable Sub-Association; (f) altering or changing a Property Use for any Building Site, which Property Use was previously approved by Declarant, the Master Owners' Association, or the applicable Sub-Association.

8.2.2 Each Owner agrees that this Declaration may be amended solely by Declarant by an instrument in writing executed by Declarant and placed of record in the records of the County where the Property is located, (a) if such amendment is necessary to bring any provision hereof into compliance or conformity with, or remove any conflict or inconsistency with, the provisions of any applicable requirement of a Governmental Authority; (b) if such amendment is required by any requirement of a Governmental Authority applicable to or promulgated by a governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, or a private lender, to enable such lender or purchaser to make or purchase mortgage loans on any portion of the Property; (c) if any such amendment is necessary to enable any Governmental Authority to insure mortgage loans on any portion of the Property based on any Requirements of such Governmental Authority; or (d) if any such amendment is permitted by any other provision hereof.

8.2.3 Notwithstanding anything to the contrary contained in this Declaration, any amendment to this Declaration which would change, alter, modify or rescind any right, title, interest or privilege herein expressly granted to a Mortgagee, shall require the prior written approval of such Mortgagee.

8.2.4 Amendments made pursuant to the provisions of this Section 8.2 shall inure to the benefit of and be binding upon Declarant, the Master Owners' Association, the Sub-Associations, all Owners, and Occupants and their respective Mortgagees.

8.2.5 Amendments shall be effective upon the date of recording in the Cobb County, Georgia land records.

8.3. Binding Effect. Each purchaser or grantee of any interest in any real property now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance thereof, thereby agrees that the conditions, covenants, restrictions, easements, and reservations of this Declaration may be amended, terminated, or extended as provided above.

8.4. Effective Date of Declaration. The effective date of this Declaration shall be the date of the filing for record in the records of the County where the Property is located.

8.5. Rights of Third Persons. This Declaration shall be recorded for the benefit of Declarant, the Owners, the Occupants, and their respective Mortgagees as herein provided, and by such recording, no adjoining property owner or other Person shall have any right, title or interest whatsoever in the Property, this Declaration, the operation or continuation of this Declaration or the enforcement of any of

the provisions hereof, and this Declaration may be amended, modified or otherwise changed in accordance with its terms without the consent, permission or approval of any adjoining owner or other party.

## **ARTICLE 9** **ENFORCEMENT**

9.1. **Responsibility of Owner.** Each Owner shall be responsible for compliance with the terms, provisions, and conditions of this Declaration by its Occupants and Permittees.

9.2. **Violations.** If any Owner or Occupant shall violate or breach any of the provisions, covenants, conditions, restrictions, and/or obligations set forth in this Declaration, and such breach or violation is not cured within twenty (20) Business Days after such Owner or Occupant has received written notice from the Master Owners' Association, the Declarant, or the applicable Sub-Association (the "**Notifying Party**") of such breach or violation, the Notifying Party shall be entitled to: (i) institute and prosecute proceedings for the recovery of damages against such Owner or Occupant for such violation or breach; (ii) institute and prosecute proceedings for the purpose of preventing or enjoining any or all such violation or breach or attempted violation or breach of the provisions, covenants, conditions, restrictions, and/or obligations set forth in this Declaration; (iii) bring a suit for specific performance of the same; (iv) in the event of a monetary violation, place a lien on the Property in the amount of the amount owed by such Owner or Occupant, and/or (v) to the extent applicable, exercise those rights and remedies set forth in Section 9.5 hereof. Except as otherwise provided for in this Declaration, such remedies shall be cumulative of and in addition to any and all other remedies expressly provided for in this Declaration or which otherwise may now or hereafter be available at law or in equity, separately, concurrently, or in any combination.

9.3. **Failure to Enforce Not a Waiver.** The failure of the Master Owners' Association, the Sub-Associations or the Declarant to enforce any of the provisions, covenants, conditions, restrictions, and/or obligations set forth in this Declaration shall in no event be deemed to be or constitute a waiver of the right to thereafter enforce the same as to any continuing or subsequent violation or breach or attempted violation or breach of the same provision, covenant, condition, restriction and/or obligation, whether occurring prior or subsequent thereto. Except as otherwise provided herein, no suit shall lie against the Master Owners' Association, the Sub-Associations or Declarant for any failure, refusal, or omission to institute or join in any action or proceeding for the enforcement hereof or to restrain the violation of any of the provisions hereof.

9.4. **Inspection.** Subsequent to reasonable written notice to the applicable Owner, the Master Owners' Association, the governing Sub-Association, Declarant, and their authorized representatives may, in the company of a representative of such Owner, to the extent reasonably practicable, from time to time at any reasonable business hour or hours, enter and inspect any Building or Building Site to ascertain compliance with this Declaration and any other documents promulgated pursuant hereto; provided, however, nothing herein shall be construed as permitted entry into any residential dwelling unit located on a Building Site.

9.5. **Right to Enter and Cure.**

9.5.1 If any Owner or Occupant violates or breaches any covenant, provision, condition, restriction, and/or obligation contained herein or in any other document promulgated pursuant hereto and fails to cure the same within twenty (20) Business Days after the Owner has received written notice from the Notifying Party of the same (or without notice if the Notifying Party, in its sole, but reasonable discretion, determines that such violation or breach has resulted in an emergency situation i.e.,



poses an immediate risk to any Persons or property), the Master Owners' Association, the governing Sub-Association and/or the Declarant shall have the right to enter upon said Building Site, and summarily abate and remove, at the expense of the Owner or Occupant thereof, any structure, thing, or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof or any documents promulgated pursuant hereto, or to do anything that should have been done by an Owner or Occupant hereunder or under any other document promulgated pursuant hereto.

9.5.2 By purchasing or leasing property subject to this Declaration, each Owner or Occupant binds itself, its successors and assigns, to pay to the Master Owners' Association, the Declarant, or the governing Sub-Association, as the case may be, the reasonable and actual cost to cure any violation hereunder.

9.6. Attorney's Fees. In any action with respect to the enforcement of the provisions of this Declaration, the prevailing party in such action shall be entitled to its reasonable attorneys' fees actually incurred.

9.7. Remedies Cumulative. The remedies provided herein shall be in addition to and not in substitution for any rights and remedies now or hereafter existing at law or in equity. The remedies provided herein or otherwise available shall be cumulative and may be exercised concurrently. The failure to exercise any one of the remedies provided herein shall not constitute a waiver thereof nor shall use of any of the remedies provided herein prevent the subsequent or condiment resort to any other remedy or remedies.

## ARTICLE 10 ESTOPPEL CERTIFICATES

10.1. Estoppel Certificates. Any Owner, Occupant, the Master Owners' Association, the Declarant, or a Sub-Association, as the case may be, shall, from time to time, within ten (10) days after receipt of written request from any other Owner, Occupant, the Master Owners' Association, the Declarant, or a Sub-Association, as the case may be (the "Requesting Party"), execute, acknowledge and deliver to the Requesting Party or to any existing or prospective purchaser or mortgagee designated by the Requesting Party, a certificate (the "Estoppel Certificate") stating, to the extent applicable: (a) that the terms and provisions of this Declaration are unmodified and are in full force and effect or, if modified, identifying any such modifications; (b) whether there is any existing default hereunder (or grounds therefor after giving the requisite notice hereunder) by the Requesting Party and, if so, specifying the nature and extent thereof; (c) whether there are any sums (other than those arising out of the normal course of operation of the Property within the previous forty-five (45) days) which the Person executing such Estoppel Certificate owes as an assessment or is entitled to receive or demand from the Requesting Party, and if there is any such sum, specifying the nature and amount thereof; and (d) the total amount of all sums owed as assessments hereunder and all liens being asserted.

## ARTICLE 11 MISCELLANEOUS

11.1. Governing Law. This Declaration concerns real property located in the State of Georgia and shall be governed by and interpreted in accordance with the laws of the State of Georgia. The venue for any action or suit brought against any Owner or Occupant relating to this Declaration or the enforcement of any provisions hereof shall be the county where the Property is located.

11.2. Severability. The invalidity of any one of the covenants, agreements, conditions or provisions of this Declaration, or any portion thereof; shall not affect the remaining portions of this

Declaration, or any part thereof, and this Declaration shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the intent of the Declarant with respect to the covenant, agreement, condition or provision which has been deemed or determined to be invalid.

11.3. Waiver. No consent or waiver, express or implied, by any Owner or Occupant to or of any breach or default by any other Owner or Occupant in the performance by such other Owner or Occupant of the obligations thereof under this Declaration shall be deemed or construed to be a consent or wavier to or of any other breach or default in the performance by such other Owner or Occupant of the same or any other obligations of such other Owner or Occupant under this Declaration. Failure on the part of any Owner or Occupant to complain of any act or failure to act of any other Owner or Occupant or to declare such other Owner or Occupant in default, irrespective of how long such failure continues, shall not constitute a waiver by such Owner or Occupant of the rights thereof under this Declaration.

11.4. Conflicts. The Zoning Conditions, applicable building and inspection codes and regulations, and any and all other Requirements of Governmental Authorities shall be observed. In the event of any conflict among this Declaration and any of the Building Site Declarations, the provisions of this Declaration shall apply.

11.5. Successors and Assigns. This Declaration is and shall be binding upon and shall inure to the benefit of each of the parties hereto, each Owner and Occupant of the Property, and their respective successors, assigns, heirs, administrators, executors, and legal representatives.

11.6. Exculpation. Neither the Declarant, the Owner's Association nor any of their respective officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of non-compliance with any Applicable Law, mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or non-malfeasance arising out of its duties hereunder, and said parties shall not be liable for any damages for same except for their bad faith, fraud or willful misconduct.

11.7. Notice. Any notice required or intended to be given to Declarant or the Master Owners' Association under the terms of this Agreement shall be in writing and shall be deemed to be duly given on the date it is delivered personally, by overnight courier, or by United States mail, at the following addresses:

Notices to the Declarant shall be addressed to:

Branch West Village III, LP  
Attn: Jack Haylett  
3340 Peachtree Road, NE  
Suite 2775  
Atlanta, GA 30326  
Email: [jhaylett@branchprop.com](mailto:jhaylett@branchprop.com)

With a copy to:

Holt Ney Zatcoff & Wasserman, LLP  
100 Galleria Parkway  
Suite 1800  
Atlanta, Georgia 30339  
Attn: Brian P. Cain, Esq.  
Email: [bcain@hznzw.com](mailto:bcain@hznzw.com)

Notices to the Master Owners' Association shall be addressed to:

Branch West Village III, LP  
Attn: Jack Haylett  
3340 Peachtree Road, NE

Suite 2775  
Atlanta, GA 30326  
Email: [jhaylett@branchprop.com](mailto:jhaylett@branchprop.com)

11.8. Right to Transfer or Assign Declarant Rights and Obligations. Any or all of Declarant's rights and obligations set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons who is the successor-in-title to Branch and such transfer or assignment shall be set forth in a document recorded in the land records. Any other transfer or assignment of the rights of Declarant set forth herein shall require the consent of each Sub-Association, which consent shall not be unreasonably withheld, conditioned or delayed.

11.9. Time of Essence. Time is of the essence with respect to this Declaration and every provision hereof.

[SIGNATURE FOLLOWS ON NEXT PAGE]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed and delivered the date first above written.

Signed, sealed and delivered in the presence of:

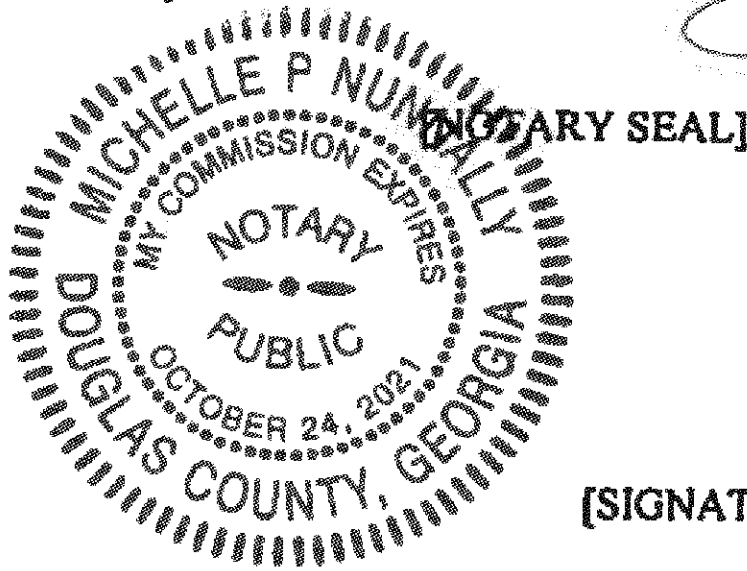
BRANCH:

BRANCH WEST VILLAGE III, LP, a Delaware limited partnership

M Baswell  
Unofficial Witness

By: Richard H. Lee [SEAL]  
Name: Richard H. Lee  
Title: Authorized Signatory

Michelle P Nunally  
Notary Public



[SIGNATURE FOLLOWS ON NEXT PAGE]



Signed, sealed and delivered  
in the presence of:

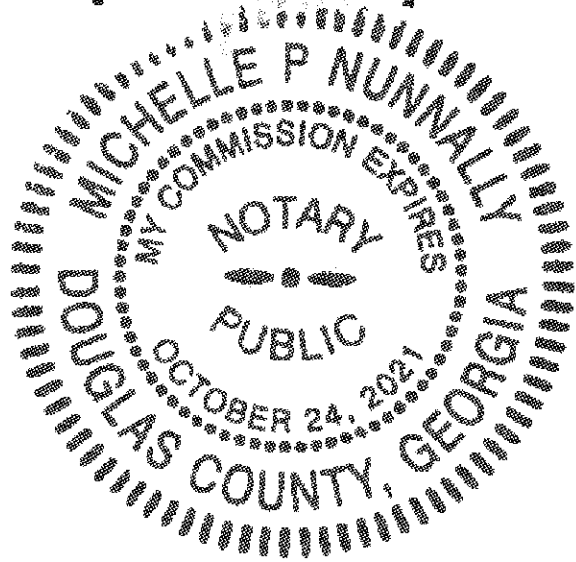
*M. Baswell*

Unofficial Witness

*Michelle P. Nunnally*

Notary Public

[NOTARY SEAL]



WV Associates:

WEST VILLAGE ASSOCIATES, LLC,  
a Georgia limited liability company

By: *Richard H. Lee*

Name: Richard H. Lee

Title: Authorized Signatory

**CONSENT AND SUBORDINATION AGREEMENT**

NXT CAPITAL, LLC, a Delaware limited liability company, as administrative agent ("Lender"), owner and holder of that certain Deed to Secure Debt, Assignment of Leases and Rents, Security Agreement and Fixture Filing from Branch West Village III, LP, a Delaware limited partnership (the "Borrower") to Lender, dated as of January 16, 2019, filed January 18, 2019 at 9:40 a.m., recorded in Deed Book 15600, page 1770, Cobb County, Georgia records, in the original principal amount of \$54,650,000.00; as re-filed January 31, 2019 at 1:28 p.m., re-recorded in Deed Book 15602, page 4304, aforesaid records, and that certain UCC Financing Statement with Addendum showing Borrower, as Debtor, and Lender, as Secured Party, filed February 18, 2019, recorded in Deed Book 15606, page 1256, aforesaid records, and that certain UCC Financing Statement No. 2019 0382247 showing Borrower, as Debtor, and Lender, as Secured Party, filed January 16, 2019, in the UCC records of the State of Delaware, (collectively, the "Security Documents"), does hereby consent to the recordation of that certain Master Declaration of Protective Covenants, Conditions, Restrictions, and Easements for West Village to which this Consent and Subordination Agreement is attached (the "Agreement"). Lender expressly consents to Borrower's execution of the Agreement and agrees that all rights, title and interest of Lender under the Security Documents are hereby made subject and subordinate to all rights, title and interest of the parties under the Agreement. Lender further covenants and agrees that the rights, title and interest of the parties under the Agreement shall not be affected or disturbed by the Lender or any other holder of the Security Documents pursuant to the exercise of any right or remedy provided for in the Security Documents or by law.

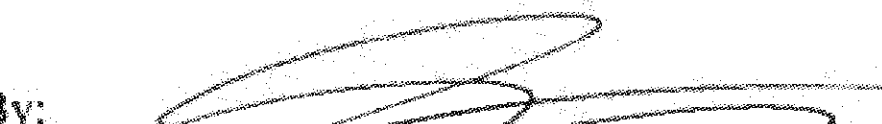
This Agreement shall be binding upon the Lender, its successors and assigns and shall inure to the benefit of the Grantee and its successors and assigns.


IN WITNESS WHEREOF, the undersigned has caused this Consent of Lender to be signed, sealed and delivered this 20 day of November, 2019.

Signed, sealed and delivered  
in the presence of:

NXT CAPITAL, LLC, a Delaware limited  
liability company

  
UNOFFICIAL WITNESS  
Dylan Hoyer

By:   
Name: Terence Adair  
Title: Vice President

  
NOTARY PUBLIC

My Commission Expires: 02/25/2023

(NOTARY SEAL)



**Exhibit "A"****Defined Terms**

**"Approving Authority"** shall mean the applicable Sub-Association which governs the portion of the Property subject to such approval; provided, however, in the event the applicable Sub-Association has not yet been formed, the Approving Authority shall be the Master Owners' Association until such time as the applicable Sub-Association is formed.

**"Applicable Law"** shall mean all present and future laws, ordinances, codes, orders, rules, regulations and requirements of all federal, state, county and municipal governments, courts, departments, agencies, commissions, boards and offices and of any other body or board or sovereign concurrently or successively exercising similar functions, and of any other lawful authority having jurisdiction over the Property.

**"Articles"** or **"Articles of Incorporation"** shall mean the Articles of Incorporation of the Master Owners' Association, as amended from time to time.

**"Board of Directors"** or **"Board"** shall mean the board of directors of the Master Owners' Association, which is the governing body of the Master Owners' Association.

**"Building"** shall mean and include, but not be limited to, both the main portion of a structure built for permanent use and all projections or extensions thereof, including, but not limited to, garages, outside platforms, decks, carports canopies and porches.

**"Building Site"** shall mean any improved or unimproved parcel of land, that is a part of the Property, the size, dimensions, and boundaries of which shall have been designated and approved by the Declarant, the Master Owners' Association or the applicable Sub-Association, as applicable.

**"Building Site Declarations"** shall mean any sub-declaration, reciprocal easement agreement, or other controlling document recorded in the real estate records of the county where the Property is located applicable to any singular Building Site which shall govern and control the use, operation, and development of such Building Site (or a similar document or instrument executed by the Owner of any Building Site which shall govern the use, operation, and development of a Building Site, notwithstanding the nomenclature used to describe such document or instrument).

**"Business Day"** shall mean any day, excluding Saturdays and Sundays, on which Bank of America, or its successors or assigns are open for business, in Atlanta, Georgia.

**"By-Laws"** shall mean the By-Laws of the Master Owners' Association, as amended from time to time. A copy of the initial By-Laws is attached hereto as **Exhibit "B"**.

**"Declaration"** shall mean this Master Declaration of Protective Covenants, Conditions, Restrictions, and Easements for West Village including the exhibits attached hereto, as amended, modified, and/or restated and in effect from time to time.

**"Declarant"** shall mean **Branch West Village III, LP**, a Delaware limited partnership, and any other Person or Persons, including the Master Owners' Association (the **"Successor Declarant"**) that succeed to the rights, duties, and obligations of Declarant hereunder pursuant to a written document or instrument executed by an authorized representative of the Declarant and an authorized representative of

Successor Declarant, which is filed in the real property records of the county where the Property is located and which sets forth and outlines the assignment by Declarant of its rights and duties hereunder as Declarant to the Successor Declarant and the assumption by Successor Declarant of the obligations of Declarant hereunder.

**“Governmental Authority”** shall mean the United States of America, the State of Georgia, Cobb County, Georgia, the Georgia Regional Transportation Authority, the Atlanta Regional Commission and any other governmental or quasi-governmental agency, authority, court, department, commission, board, bureau or instrumentality with jurisdiction over the Property.

**“Improvement”** shall mean and include every structure and all appurtenances thereto of every kind and type and any other man-made or man caused physical change upon, over, across, above or under the Property or part thereof. Furthermore, Improvement shall include, but not be limited to, the following facilities and activities, whether of a permanent or temporary nature: any and all Buildings, streets, roads, access roads, driveways, sidewalks, walkways, pedestrian malls, bike paths, running or jogging paths, ways or trails, traffic control devices and signs, parking areas, loading areas, signs, canopies, awnings, trellises, fences, lawns, landscaping (including, without limitation, landscaping of balconies, plazas and other portions of Buildings), plazas, patios, recreational facilities such as tennis courts and swimming pools, shelters, security and safety devices, bridges, construction trailers and other temporary construction outbuildings.

**“Master Owners’ Association”** shall mean West Village Phase III Owner’s Association, Inc., a Georgia nonprofit corporation organized by Declarant pursuant to Article 4 hereof and its successors and assigns, if any.

**“Member(s)”** shall mean and refer to all Owners who are Members of the Master Owners’ Association as provided in Article 4 hereof.

**“Mortgage”** shall mean a mortgage, deed to secure debt, deed of trust, or other similar security instrument now or hereafter duly recorded in the real property records of Cobb County, Georgia, conveying a lien upon or security title to the Property, any part, thereof or any interest or estate therein, or any Improvements thereon, or any lease of the Property, any part thereof or any interest or estate therein, or any Improvements thereon, in a transaction commonly known as a “sale/ leaseback.”

**“Mortgagee”** shall mean the holder of a Mortgage.

**“Mortgagor”** shall mean the grantor of a Mortgage.

**“Occupant”** shall mean (i) any Person holding a leasehold interest or usufruct in any of the real property subject to this Declaration; (ii) any Person owning or occupying a townhome, an apartment or a single family residence located on or within a Building Site; or (iii) any Person owning or occupying any commercial space located on or within a Building Site.

**“Owner”** shall mean any Person or Persons, including, without limitation, Declarant, who owns or holds a fee simple interest in and to an entire Building Site, as shown by and in the real property records of Cobb County, Georgia, subject to the following special rules: (a) individual tenants or lessees of any portion of such real property shall not be deemed an Owner thereof, unless otherwise agreed by the fee simple or remainder title holder thereof and approved in writing by the Master Owners’ Association, and (b) with respect to a Building Site, for purposes of this Declaration, the Sub-Association of those Persons owning portions of the Property that are encumbered by a Building Site Declaration shall be



deemed the Owner of the Building Site for purposes of this Declaration, including, without limitation, membership in the Master Owners' Association; and

**"Parties"** shall mean the Owners and Occupants, collectively, and the term **"Party"** shall mean any Owner or Occupant individually. A Mortgagee or ground lessor shall not be deemed to be the Party with respect to a Building Site so long as the Mortgagor or lessee, as the applicable Party, retains the entire possessory interest in such Building Site.

**"Permittees"** means and includes any individual townhome or single family residence owner, and any tenants, subtenants, contractors, subcontractors, agents, employees, licensees, and invitees and their respective officers, directors, contractors, subcontractors, agents, employees, licensees, invitees, customers, and visitors of any Owner or Occupant.

**"Person"** shall mean any corporation, partnership, co-tenancy, joint venture, individual, business trust, real estate investment trust, trust, banking association, federal or state savings and loan institution, or any other legal entity, whether or not a party hereto.

**"Property"** shall mean, collectively, the Multifamily Parcel, Townhome Property and the Single Family Property.

**"Property Interest"** shall mean (i) a tract of land in the Property in which Declarant, or any Person comprising part of Declarant, owns fee simple title; (ii) a tract of land in the Property in which Declarant or any Person comprising part of Declarant, owns any interest as a co-tenant; and (iii) real property interests, i.e., those interests described in clauses (i) through (ii) above, owned by a Person or Persons other than Declarant, or any Person comprising part of Declarant, but in which Declarant, or any Person comprising part of Declarant, has an economic interest, direct or indirect, such as a partnership or joint venture in which Declarant, or any Person comprising part of Declarant, or, for example, a subsidiary corporation of Declarant, or any Person comprising part of the Declarant, is a partner or joint venturer.

**"Property Use"** shall mean the intended functions of, or activities that take place on a temporary or ongoing basis on, in or with respect to any parcel or element of real property that is part of the Property, as determined by the Zoning Conditions.

**"Sub-Association"** shall mean any owners' association to be created to administer a specific Building Site and common areas lying within such Building Site by a Building Site Declaration.

**"Zoning Conditions"** shall mean the zoning ordinances and related conditions presently or hereafter applicable to the Property, including, without limitation, those certain zoning conditions approved by the Board of Commissioners of Cobb County on December 19, 2017 with respect to the zoning case identified as Z-64.

**EXHIBIT "B"****BY-LAWS  
OF  
WEST VILLAGE PHASE III OWNER'S ASSOCIATION, INC.****ARTICLE I  
MEMBERS**

**Section 1.1 Members.** The members of WEST VILLAGE PHASE III OWNER'S ASSOCIATION, Inc., a Georgia nonprofit corporation (the "**Corporation**"), shall consist of each party which is deemed an "Owner" for purposes of that certain Master Declaration of Protective Covenants, Conditions, Restrictions, and Easements for West Village to be recorded with the Clerk of the Superior Court of Cobb County, Georgia, as amended from time to time (the "**Declaration**"). All capitalized terms used in these By-Laws shall have the meanings ascribed to such terms in the Declaration (unless otherwise defined herein).

**Section 1.2 Classes of Members.** The Corporation shall have Class A Members, which shall include the Owner of the Townhome Property and the Owner of the Single Family Property, and Class B Members, which shall be the Declarant and if applicable, any Successor Declarant. The Class B membership shall terminate only at such time as (i) the Class B Member so designates in writing delivered to the Master Owners' Association, (ii) the Class B Member no longer holds a Property Interest, or (iii) the Successor Declarant is the Master Owners' Association.

**ARTICLE II  
MEETINGS OF MEMBERS**

**Section 2.1 Annual Meeting.** The annual meeting of the Members of the Corporation shall be held at the Corporation's principal office, or at such other place as the Board (as hereinafter defined) may designate in the notice described in **Section 2.3** below, on such date and at such time as the Board may designate.

**Section 2.2 Special Meeting.** The Corporation shall hold a special meeting of Members (each a "**Special Meeting**"), on the call by (i) a majority of the Board, (ii) the President of the Corporation, or (iii) if the holders of at least thirty percent (30%) of all the votes entitled to be cast at the proposed special meeting sign, date, and deliver to the Secretary of the Corporation one or more written demands for the meeting which describe the purpose(s) for which the special meeting is to be held. A Special Meeting may be held in or out of the State of Georgia, at such place as a majority of the Board or the President of the Corporation may designate, or, in the absence of such designation, at the Corporation's principal office.

**Section 2.3 Notice of Meetings of Members.** Written or printed notice of the date, time, and place of a meeting of Members shall be given no fewer than ten (10) days and nor more than sixty (60) days before the meeting date. Furthermore, notice of any Special Meeting shall be given within thirty (30) days after the date that written demand(s) for such meeting by the holders of at least thirty percent (30%) of all the votes entitled to be cast is delivered to the Secretary of the Corporation and shall also be subject to the requirements set forth in the prior sentence. Notice of a Special Meeting shall include a description of the purpose(s) for which the meeting is called, and only business reasonably within the purpose(s) described in said notice shall be conducted at a Special Meeting. Any notice given hereunder shall be in writing and shall be communicated in person, by facsimile transmission, or by mail or

overnight carrier to the Member's address shown in the Corporation's current record of Members. If mailed, written notice by the Corporation to the Members shall be effective when mailed, if mailed postpaid and correctly addressed to the Member's address shown in the Corporation's current record of Members. If not mailed, written notice shall be effective when received. If a meeting is adjourned to a different date, time, or place, notice need not be given of the date, time, or place if the new date, time, or place is announced at the meeting before adjournment. However, if a new record date for the adjourned meeting is or must be fixed, notice of the adjourned meeting shall be given to persons who are Members as of the new record date.

**Section 2.4 Action by Members Without Meeting.** Action required or permitted by the Georgia Nonprofit Corporation Code (the "**Nonprofit Code**") to be approved by the Members may be approved without a meeting if the action is approved by Members holding at least a majority of the voting power. The action must be evidenced by one or more written consents describing the action taken, signed by those Members representing at least a majority of the voting power, and delivered to the Corporation for inclusion in the minutes or filing with the corporate records. A consent signed under this section shall have the effect of a meeting vote and may be described as such in any document.

**Section 2.5 Waiver of Notice.** A Member may waive any notice required by the Articles of Incorporation, these By-Laws, or by any provision of the Nonprofit Code, before or after the date and time stated in the notice. The waiver must be in writing, be signed by the Member entitled to the notice, and be delivered to the Corporation for inclusion in the minutes or filing with the corporate records. A Member's attendance at a meeting, either in person or by proxy (i) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (ii) waives objection to consideration of a particular matter at the meeting that is not within the purpose(s) described in the meeting notice, unless the Member objects to considering the matter when it is presented.

### ARTICLE III VOTING RIGHTS OF MEMBERS

**Section 3.1 Voting Rights: Required Vote.** In accordance with Sections 3.2 and 3.3 below, each Member shall have the right to vote on the Directors (as hereinafter defined), which shall be elected by a plurality of the votes cast by the Members entitled to vote in the election at a meeting at which a quorum is present. The Members may also set the size of the Board, fill vacancies on the Board, and may vote to remove a Director as provided in Article IV hereof.

**Section 3.2 Class A Members.** Each Class A Member shall have one (1) vote for each residential unit (single family or townhome, as the case may be) located on the Property or Building Site, owned, operated or governed by such Member. When more than one Person holds a fee ownership interest in a single Building Site, all such Persons shall be Members, provided that such jointly owned Building Sites shall be entitled to only those votes that the owner of the Site would be entitled to were such owner an individual Person.

**Section 3.3 Class B Member.** The Class B Member shall have one (1) vote for each residential apartment unit located on the Property owned, operated or governed by such Member.

**Section 3.4 Quorum.** Except as otherwise required by law, ten percent (10%) of the votes entitled to be cast on a matter must be represented at any meeting to constitute a quorum on that matter.

**Section 3.5 Proxies.** A Member may vote in person or by proxy. The person or entity designated a proxy need not be a Member. A Member may appoint a proxy to vote or otherwise act for it

by signing an appointment form, either personally or by his attorney-in-fact. An appointment of proxy shall be effective when received by the Secretary of the Corporation or other officer or agent authorized to tabulate votes. An appointment shall be valid for eleven (11) months unless another period is expressly provided in the appointment form. An appointment of proxy shall be revocable by the Member except as otherwise provided by law.

Section 3.6 Delinquent Members. If any Member shall fail to pay, or cause to be paid, any of the sums due pursuant to the Declaration within ten (10) business days following the date on which any such payment(s) is due, the Corporation shall give written notice thereof to such Member. In the event that such Member shall fail to pay any delinquent sums within ten (10) days following receipt of the aforementioned written notice such Member shall become a "Delinquent Member" until all amounts owing to the Corporation by such Member are paid in full. A Delinquent Member shall not be permitted to participate or vote on any matter before the Members.

#### ARTICLE IV BOARD OF DIRECTORS

Section 4.1 Board of Directors. The Board of Directors (the "Board") shall consist of between three (3) and five (5) individuals (each a "Director"). A Director need not be a resident of the State of Georgia or a Member of the Corporation. The number of Directors may be fixed or changed from time to time, within the minimum and maximum prescribed herein, by an affirmative vote of the Members holding a majority of the votes of the Corporation or the Board, but only Members may change the range for the size of the Board or change from a variable-range to a fixed size Board; provided, however, that the Corporation must never have fewer than three (3) Directors and a decrease in the number of Directors shall not shorten an incumbent Director's term. Directors shall be elected at the first annual Members' meeting and at each subsequent annual meeting, and the terms of the initial Directors of the Corporation shall expire at the first Members' meeting at which Directors are elected. The terms of all other Directors shall expire at the next annual Members' meeting following their election. Despite the expiration of a Director's term, such Director shall continue to serve until his successor is elected and qualified or until there is a decrease in the number of Directors. A Director may resign at any time by delivering written notice thereof to the Board or to the Corporation. A resignation shall be effective when the notice is delivered unless the notice specifies a later effective date. A vacancy created by a resignation that will occur at a specific later date may be filled before the vacancy occurs but the new Director may not take office until the vacancy occurs. If a vacancy occurs on the Board, either the Members or the Board may fill the vacancy.

Section 4.2 Duties. It shall be the duty of the Board:

(a) To cause to be kept a complete record of all its acts and corporate affairs and to present the statement thereof to the voting Members at the annual meeting of the voting Members or at any special meeting held in accordance with the terms of Section 2.2 above;

(b) To appoint and supervise all officers, agents, and employees of the Corporation, and to ensure that their duties are properly performed; and

(c) As more fully provided in the Declaration, to invoice the Members for the amount of the Common Expenses owed by such Members.

Section 4.3 Regular Meetings of the Board. The regular meetings of the Board shall be held in or out of the State of Georgia at times and dates to be established by the Board from time to time.



**Section 4.4 Special Meetings of the Board.** The Board may hold special meetings in or out of the State of Georgia, upon the call of the President, or any two Directors.

**Section 4.5 Notice of Meetings of the Board.** All meetings of the Board, regular and special, shall be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the meeting. Such notice shall be in writing and shall be communicated in person, by facsimile transmission, or by mail or overnight carrier to the Member's address shown in the Corporation's current record of Members. If mailed, written notice by the Corporation to the Members shall be effective when mailed, if mailed postpaid and correctly addressed to the Member's address shown in the Corporation's current record of Members. If not mailed, written notice shall be effective when received. Notice of an adjourned meeting need not be given if the time and place to which the meeting is adjourned are fixed at the meeting at which the adjournment is taken, and if the period of adjournment does not exceed one month in any one adjournment.

**Section 4.6 Action Without Meeting of the Board.** Action required or permitted by the Nonprofit Code to be taken at a Board meeting may be taken without a meeting if the action is taken by at least a majority of the Board. The action must be evidenced by one or more written consents describing the action taken, signed by no fewer than the required number of Directors, and delivered to the Corporation for inclusion in the minutes or filing with the corporate records reflecting the action taken. Action taken under this section shall be effective when the last Director signs the consent, unless the consent specifies a different effective date. A consent signed under this section shall have the effect of a meeting vote and may be described as such in any document.

**Section 4.7 Waiver of Notice.** A Director may waive any notice required by these By-Laws, the Articles of Incorporation, or any provision of the Nonprofit Code, before or after the date and time stated in the notice. The waiver must be in writing, signed by the Director entitled to the notice, and delivered to the Corporation for inclusion in the minutes or filing with the corporate records. In addition, a Director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the Director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

**Section 4.8 Quorum and Voting.** A quorum of the Board shall consist of the greater of (i) two (2) Directors, or (ii) one-third (1/3) of the number of Directors prescribed in accordance with the Articles of Incorporation and the By-Laws at the time of the meeting. If a quorum is present when a vote is taken, the affirmative vote of a majority of Directors present shall be the act of the Board. A Director who is present at a meeting of the Board when corporate action is taken shall be deemed to have assented to the action taken unless: (a) he objects at the beginning of the meeting (or promptly upon his arrival) to holding the meeting or transacting business at the meeting; (b) his dissent or abstention from the action taken is entered in the minutes of the meeting; or (c) he delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the Corporation immediately after adjournment of the meeting. The right of dissent or abstention shall not be available to a Director who votes in favor of the action taken.

**Section 4.9 Committees.** The Board may create one or committees. A committee may consist of two (2) or more Directors. All members of committees of the Board which exercise powers of the Board must be members of the Board and shall serve at the pleasure of the Board. The creation of a committee and appointment of a Director(s) to it must be approved by a majority of all the Directors in office when the action is taken. The provisions of the Nonprofit Code, as now in effect or hereafter amended, and these By-Laws which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the Board shall apply to committees and their Members as

well. To the extent specified by the Board, each committee may exercise the authority of the Board under these By-Laws and the laws of the State of Georgia. A committee shall not, however: (i) approve or propose to Members action that the laws of the State of Georgia require to be approved by Members; (ii) fill vacancies on the Board or on any of its committees; (iii) amend the Articles of Incorporation; (iv) adopt, amend, or repeal the By-Laws; or (v) approve a plan of merger not requiring Member approval. Any committee may act by a majority vote of the members of such committee or by a writing signed by a majority of all of the members of such committee.

Section 4.10 Removal of Directors. The Members may remove one or more Directors with or without cause. A Director may be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him. A Director shall be removed by the Members only at a Special Meeting called for the purpose of removing him and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of a Director(s).

## ARTICLE V OFFICERS

Section 5.1 Officers. The officers of the Corporation shall be a President, a Vice President, a Treasurer, and a Secretary. The Board, or a duly appointed officer if authorized by the Board, may also appoint any number of Vice Presidents, Assistant Secretaries, and/or Assistant Treasurers. The same individual may simultaneously hold more than one office in the Corporation.

Section 5.2 Removal. The Board may remove any officer at any time with or without cause, and any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer. The appointment of an officer does not itself create contract rights, and an officer's removal shall not affect the officer's contract rights, if any, with the Corporation.

Section 5.3 Vacancies. An officer may resign at any time by delivering notice to the Corporation. A resignation shall be effective when the notice thereof is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the Corporation accepts the future effective date, the Board may fill the pending vacancy before the effective date if the Board provides that the successor shall not take office until the effective date. An officer's resignation shall not affect the Corporation's contract rights, if any, with the officer.

Section 5.4 Duties of President. The President shall preside at all meetings of the Board and call to order all meetings of the Members. The President shall execute all contracts in the name of the Corporation, when authorized to do so by the Board; appoint and discharge agents and employees subject to the approval of the Board; and the President shall have the authority to generally manage the business and affairs of the Corporation and perform all duties incidental to the President's office.

Section 5.5 Duties of Vice President. The Vice President shall, in any absence or incapacity of the President, perform the duties of that office and shall also perform those other duties prescribed by the Board.

Section 5.6 Duties of the Treasurer. The Treasurer shall have the care and custody of all of the funds and securities of the Corporation and deposit the same in the name of the Corporation in such bank or banks as the Directors may select; the Treasurer shall have the authority delegated to the Treasurer by the Board to sign checks, drafts, notes and orders for the payment of money.

Section 5.7 Duties of the Secretary. The Secretary shall keep the minutes of the meetings of the Board and also the minutes of the meetings of Members; the Secretary shall authenticate the records

of the Corporation; the Secretary shall attend to the giving and serving of all notices of the Corporation; the Secretary shall have charge of the minute book, and such other records of the Corporation which are required to be kept by these By-Laws or as the Board may direct; the Secretary shall attend to such correspondence as may be assigned to the Secretary and perform all duties incidental to the Secretary's office.

## ARTICLE VI INDEMNIFICATION

Section 6.1 Indemnification of Directors and Officers. The Corporation shall indemnify and advance expenses to each present and future Director or officer of the Corporation, or any person who, while a Director or officer of the Corporation, may serve at the Corporation's request as a director, officer, partner, trustee, employee, member, manager, or agent of another foreign or domestic corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, or other enterprise (and, in either case, such person's heirs, estate, executors, or administrators) to the full extent allowed by the laws of the State of Georgia, both as now in effect and as hereafter amended or adopted. The Corporation may indemnify and advance expenses to any employee or agent of the Corporation who is not a Director or officer (and such person's heirs, estate, executors, or administrators) to the same extent as to a Director or officer, if the Board determines that it is in the best interests of the Corporation to do so. The Corporation shall also have the power to contract with any individual Director, officer, employee, or agent for whatever additional indemnification the Board shall deem appropriate. The Corporation shall have the power to purchase and maintain insurance on behalf of an individual who is or was a Director, officer, employee, or agent of the Corporation, or who, while a Director, officer, employee, or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, member, manager, or agent of another foreign or domestic corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by such person in that capacity or arising from such person's status as a Director, officer, employee, or agent of the Corporation, whether or not the Corporation would have the power to indemnify such person against the same liability under these By-Laws.

## ARTICLE VII FISCAL YEAR

Section 8.1 Calendar Year. The books of the Corporation shall be on a calendar year basis and shall begin on the 1st day of January and end on the 31st day of December of each year.

## ARTICLE VIII SEAL

Section 9.1 Seal. The Corporation shall have no seal.

## ARTICLE IX AMENDMENTS TO BY-LAWS

Section 10.1 Amendment of By-Laws. The Board may amend or repeal these By-Laws.

## ARTICLE X MISCELLANEOUS

Section 11.1 Conflicts. In the event of any conflict between the Articles of Incorporation and these By-Laws, the Articles of Incorporation shall control; and in the event of any conflict between these By-Laws and the Declaration, the Declaration shall control.

Section 11.2 Pronouns. Wherever appropriate in these By-Laws, personal pronouns shall be deemed to include the other genders and the singular to include the plural.

Section 11.3 Definitions. All initially capitalized terms used but not defined herein have the meanings ascribed to them in the Declaration.

*[Signature on following page]*



The foregoing By-Laws were adopted by the Board of Directors on \_\_\_\_\_, 2019.

**WEST VILLAGE PHASE III OWNER'S  
ASSOCIATION, INC.**

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