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JW Homes, LLC
Attn: Legal Department
4125 Atlanta Road
Smyrna, GA 30080

DECLARATION OF PROTECTIVE COVENANTS

FOR

MILL CREEK PRESERVE

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TABLE OF EXHIBITS

Exhibit Name

- “A” Property Initially Subject to Declaration
- “B” Additional Property which can be Unilaterally Subject to Declaration by Declarant
- “C” Bylaws of Mill Creek Preserve Neighborhood Association, Inc.

DECLARATION OF PROTECTIVE COVENANTS

FOR

MILL CREEK PRESERVE

THIS DECLARATION OF PROTECTIVE COVENANTS FOR MILL CREEK PRESERVE ("Declaration") is made on the date hereinafter set forth by JW HOMES, LLC, a Delaware limited liability company (hereinafter sometimes called "Declarant").

Background Statement

Declarant is the owner of the real property described in Section 2.1 of this Declaration;
and

Declarant desires to subject the real property described in Section 2.1 to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in Section 2.1, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, shall be binding on all persons having any right, title or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns, and shall inure to the benefit of each and every owner of all or any portion thereof.

Article 1
Definitions

Unless the context shall prohibit, certain words used in this Declaration shall be defined as follows:

- (a) "Association" shall mean and refer to Mill Creek Preserve Neighborhood Association, Inc., a nonprofit Georgia corporation, its successors and assigns.
- (b) "Board of Directors" or "Board" of the Association shall be the appointed or elected body, as applicable, having its normal meaning under Georgia corporate law, responsible for the operation, management and administration of the Community.

- (c) "Bylaws" shall refer to the Bylaws of Mill Creek Preserve Neighborhood Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference.
- (d) "Common Area" shall mean any and all real and personal property and easements, leaseholds and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.
- (e) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "A", attached hereto, and (i) such additions thereto as may be made by Declarant (or its Mortgagee or transferee, as provided in the Declaration) of all or any portion of the real property described in Exhibit "B", attached hereto; and (ii) such additions thereto as may be made by the Association (as provided in the Declaration) of other real property.
- (f) "Community-Wide Standard" shall mean 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 of the Association, but must be consistent with the Community-Wide Standard originally established by the Declarant.
- (g) "Declarant" shall mean and refer to JW HOMES, LLC, a Delaware limited liability company, and its successors-in-title and assigns.
- (h) "Declarant Control Period" means the period beginning on the effective date of this Declaration and expiring on the later of (i) no later than 6 months after the date on which Declarant no longer owns any property for development and/or sale in the Community (that is, 100% of the Lots planned by Declarant to be part of the Community shall have been conveyed to Owners for occupancy as a residence), and (ii) the date on which Declarant no longer has the right unilaterally to annex additional property to the Community under the terms of Article 8. Notwithstanding the preceding, the Declarant may unilaterally surrender all or any portion of its rights and obligations as Declarant, including the right to appoint and remove directors and officers, at any time by filing an amendment or termination to such effect in the Cobb County, Georgia land records.
- (i) "Governing Documents" means the Declaration, Bylaws, and the Association's rules and regulations and any use restrictions established by Declarant or the Association, together any amendments to any of the foregoing.
- (j) "Limited Common Area" shall mean any and all real property located on the southern portion of Lots 1 through and including 9, and shown and designated as Limited Common Area on a subdivision plat for the Community.

- (k) "Lot" shall mean any plot of land or real property 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 any plats and/or plans for the Community, or amendments or supplements thereto, recorded in the Cobb County, Georgia land records. The ownership of each Lot shall include, and there shall automatically pass with the title to each Lot as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interest of an Owner in the Common Area and Limited Common Area, as herein provided.
- (l) "Majority" means those eligible votes, Owners or other group as the context may indicate totaling more than 50% of the total eligible number.
- (m) "Mortgage" means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.
- (n) "Mortgagee" shall mean the holder of a Mortgage.
- (o) "Occupant" shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.
- (p) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.
- (q) "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.
- (r) "Private Drive" means that certain access easement 20 feet in width located on Lots 1 through 9 and adjacent to Lot 10 in the Community which provides access, ingress and egress to said Lots, all as more particularly identified on the recorded subdivision plat(s) for the Community.
- (s) "Supplementary Declaration" means a supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

- (t) “Total Association Vote” means the votes attributable to the entire membership of the Association (including the 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, 2/3 of the Total Association Vote is required to approve a matter, such matter must receive more than 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.

Article 2

Property Subject to this Declaration

2.1. Property Hereby Subjected to this Declaration. The real property described in Exhibit “A” attached hereto and by reference made a part hereof is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration.

2.2. Other Property. Only the real property described in Section 2.1 is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, Declarant and the Association have the right, but not the obligation, to subject other real property to this Declaration, as provided in Section 8.1.

Article 3

Association Membership and Voting Rights

3.1. Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to 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 membership per Lot. If a Lot is owned by multiple Owners, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member’s spouse, but in no event shall more than one vote be cast for each Lot owned.

3.2. Voting. Members shall be entitled to one vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary of the Association prior to any meeting. A vote related to a Lot shall be suspended if more than one Person seeks to exercise it.

3.3. Management of Association. The Association shall be managed by a Board of Directors and officers, who shall be appointed or elected as specified in the Bylaws. The Board may hire a property management company to perform certain of its rights and duties under this Declaration and as to the Association. The Board may also designate the property management company or one or more other parties as a "designee" empowered to perform certain rights or duties of the Board under this Declaration.

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, welfare, common benefit and enjoyment of the Owners and Occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board.

4.2. Creation of the Lien and Personal Obligation for Assessments.

(a) Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association:

- (i) annual assessments or charges;
- (ii) special assessments, such assessments to be established and collected as hereinafter provided; and
- (iii) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration.

(b) All assessments, together with late charges (in an amount determined by the Board from time to time in its sole discretion), and interest on the principal amount due (at a rate not to exceed the lesser of the maximum rate permitted by law or 18% per annum), shall be a charge on the land and a continuing lien upon the Lot 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 the costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and the award of attorney's fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-11(a)(2).

(c) Each assessment, together with late charges, interest, costs of collection and reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Lot 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 Lot, 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. Any first Mortgagee taking title through foreclosure

proceedings or deed in lieu of foreclosure shall not be liable for the unpaid assessments of the grantor.

(d) Assessments shall be paid at a uniform rate for all similarly situated Lots in such manner and on such dates as may be fixed by the Board, which may include, without limitation, acceleration, upon 10 days written notice, of assessments for delinquent amounts.

4.3. Computation; Annual Assessment.

(a) It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the annual assessment to be levied against each Lot for the year (or portion thereof in the case of the initial budget) to be delivered to each member at least 30 days prior to the due date of such annual assessment (or the first installment thereof). Notwithstanding the foregoing, if the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget has been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year and the annual assessment shall be based on that budget. No vote of the Owners shall be required to approve the budget during the Declarant Control Period.

(b) After the Declarant Control Period, if the Board proposes a budget that increases annual assessments by more than 30% over the previous year's annual assessments, members may request a special meeting pursuant to Section 2.3 of the Bylaws to vote on such proposed budget. The proposed budget shall be deemed approved unless disapproved at the special meeting by a Majority of the Total Association Vote.

4.4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments against all Owners subject to assessment for any expenses that were unbudgeted, unanticipated or in excess of the budget. So long as the total amount of special assessments allocated to each Lot does not exceed \$300.00 in any one fiscal year, the Board may impose the special assessment without a vote of the members. Except for special assessments levied pursuant to Section 7.3, any special assessment which would cause the amount of special assessments allocated to any Lot to exceed this limitation shall be effective only if approved by a Majority of the Total Association Vote and Declarant (during the Declarant Control Period). Special assessments shall be paid as determined by the Board and may be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.5. Specific Assessments.

(a) The Board shall have the power to levy specific assessments pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board 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.

(b) By way of explanation and not limitation, the following shall constitute specific assessments under the Declaration:

- (i) fines levied pursuant to Section 12.1;
- (ii) the capital contribution set forth in this Section 4.9;
- (iii) the costs of maintenance performed by the Association for which an Owner is responsible under Section 5.2; and
- (iv) the costs of maintenance, repair and replacement to the Private Drive, which shall be paid by the Owners of Lots 1 through 9 and (if there is vehicular access from Lot 10 to the Private Drive) Lot 10.

(c) The Board may also specifically assess Lots for the following Association expenses:

- (i) Expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received;
- (ii) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be specifically assessed equitably among all Lots according to the benefit received; and
- (iii) Expenses incurred by the Association which are attributable to or the result of a particular Owner or the Occupants, guests, tenants, invitees or licensees of such Owner may be specifically assessed against the Lot of said Owner.

4.6. Lien for Assessments.

(a) All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs of collection and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association, and the Association shall be entitled to file such a lien in the Cobb County, Georgia land records. Such lien shall be superior to all other liens and encumbrances on such Lot, except for:

- (i) liens of ad valorem taxes;
- (ii) liens for all sums unpaid on a first Mortgage; or

- (iii) liens for all sums on any Mortgage to Declarant duly recorded in the Cobb County, Georgia land records and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

(b) All other Persons acquiring liens or encumbrances on any Lot after this Declaration is recorded in the Cobb County, Georgia land records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

4.7. Effect of Nonpayment of Assessments: Remedies of the Association.

(a) All sums (including assessments or installments thereof) assessed against any Lot pursuant to this Declaration which are not paid when due shall be delinquent. Any such sums delinquent for a period of more than 10 days shall incur a late charge in such amount as the Board may from time to time determine. The Board shall be entitled to collect interest on the principal amount due at a rate not to exceed the lesser of the maximum rate permitted by law or 18% per annum.

(b) The Association may cause a notice of delinquency to be given to any member who has not paid within 10 days following the due date. If any such sums are not paid within 30 days after the due date, the Board may accelerate and declare immediately due all such sums (including annual assessments or installments thereof) without any further notice being given to the delinquent Owner, and a lien, as herein provided, shall attach. Such lien shall include all late charges, interest on the principal amount due, costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law.

(c) If any sum assessed against any Lot pursuant to this Declaration remains unpaid after 60 days from the due date, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage or convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, and the right to use and enjoy the Common Area and the Limited Common Area, and, upon 10 days written notice, the right to receive such services and other benefits as may be provided by the Association, if any. Any suspension shall not affect an Owner's obligation to pay assessments coming due during the period of suspension and shall not affect the permanent lien on such Lot in favor of the Association.

(d) No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation,

abandonment of the Lot or nonuse of the Common Area. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for any inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

(e) 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 attorney's fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2).

(f) All payments shall be applied first to costs and attorney's fees, then to late charges, then interest and then to delinquent assessments.

4.8. Date of Commencement of Assessments/Assessment Obligation of Declarant.

(a) The assessments provided for herein shall commence as to all Lots subject to assessment hereunder upon conveyance of a Lot by the Declarant to a Person other than Declarant or an affiliate of Declarant. All assessments shall be due and payable in a manner and on a schedule as the Board may provide. All assessments shall be rounded up to the nearest dollar and payable as such.

(b) Each Lot owned by Declarant or its respective affiliates which does not contain an occupied residence shall not be subject to any assessment provided for herein.

(c) Any Lot 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 Lot is approved for use as a model home and is not occupied for residential purposes.

(d) Notwithstanding anything to the contrary herein, Declarant or its respective affiliates may contribute assessments due from them in services or materials or a combination of services and materials, rather than in money (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If the Declarant or its respective affiliates and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant or its respective affiliates cannot agree as to the value of any contribution, the Declarant or its respective affiliates shall supply the Association with a detailed explanation of the services performed and materials furnished, and the Association shall acquire bids for performing like services and furnishing like materials from 3 independent contractors approved by the Declarant or its respective affiliates who are in the business of providing such services and materials. If the Association and the Declarant or its

respective affiliates, as the case may be, are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

4.9. Capitalization of Association.

(a) An initiation fee (sometimes also referred to as a “working capital assessment” or “capital contribution”) must be paid to the Association by or on behalf of any purchaser of a Lot (other than Declarant or its affiliates) upon the transfer or sale of the Lot, as follows:

Purchaser	Maximum Initiation Fee
Initial Owner (the party purchasing from the Declarant, a developer or a builder)	An amount equal to up to 100% of the annual assessment being charged by the Association for the year in which the closing of the transfer or sale of the Lot occurs.
Second and subsequent Owners	An amount equal to up to 100% of the annual assessment being charged by the Association for the year in which the closing of the transfer or sale of the Lot occurs.

(b) This initiation fee set forth in subsection (a) above shall constitute a specific assessment against the Lot, and shall be in addition to, not in lieu of, any other assessments levied on the Lot and shall not in any way be construed as part of or identical to any such assessments or as an advance payment of any such assessments. These initiation fees shall be collected at the closing of the Lot, or if not collected at closing, shall be paid immediately upon demand by the Association. The initiation fee shall be disbursed to the Association for any use which provides a direct benefit to the Community, including, without limitation, covering operating and other expenses (including reserves) incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

(c) No initiation fee under subsection (a) shall be required from the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, but an initiation fee shall be required from the Owner acquiring the Lot from the foreclosing Mortgagee.

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 to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances may be evidenced by one or more promissory notes from the Association in favor of the Declarant or by appropriate entries in the books and records of Declarant and the Association; or (b) cause the Association to borrow

such amount from a commercial lending institution at the then-prevailing rates for such a loan in the local area of the Community.

4.11. Estoppel Letter. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, 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 Lot. 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 10 business days after receiving a written request, certify to the amount of any unpaid assessments constituting a lien on a specified Lot. A certification letter signed by an officer of the Association or the Association's management company, if any, as to the amount of assessments due with respect to a Lot shall be binding upon the Association. The Association may charge a reasonable fee as may be permitted by law as a prerequisite to the issuance of such statement. It is the intent of this provision to comply with O.C.G.A. Section 44-14-15(c), as amended.

Article 5 **Maintenance**

5.1. Association's Responsibility.

(a) The Association shall maintain and keep in good repair the Common Area, and all maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping, structures, and improvements located thereon. The Association shall also maintain, whether or not the same constitutes Common Area, the following:

- (i) all entry features for the Community, including any appurtenant landscaping;
- (ii) all street signs, if any, originally installed by Declarant or its affiliates, if and to the extent the same are not maintained on an ongoing basis by a governmental authority or third party;
- (iii) all storm water detention/retention ponds and any fence, gate, wall or enclosure surrounding said storm water detention/retention ponds and any other storm water drainage facilities which were originally maintained by Declarant or its affiliates and serve the Community, to the extent such areas are not maintained on an ongoing basis by a governmental authority or third party. However, each Owner of a Lot, and not the Association, shall be responsible for any and all storm water drainage facilities and pipes, wires and conduits which exclusively serve such Lot;
- (iv) all street medians and street islands and any landscaping associated therewith, if and to the extent the same are not maintained on an ongoing basis by a governmental authority or third party;

- (v) all pedestrian trails and walking paths;
- (vi) the centralized mailbox area and the mailboxes located thereon;
- (vii) all pipes, wires and conduits which serve more than 1 Lot or a Lot and Common Area;
- (viii) all Community green space and open space;
- (ix) all of the property located outside of the boundary of Lots which was originally maintained by Declarant or its affiliates;
- (x) the Private Drive; provided however, the cost associated with any maintenance, repair and replacement shall be a specific assessment against the Owners of Lots 1 through 9 and (if there is vehicular access from Lot 10 to the Private Drive) Lot 10, as provided herein;
- (xi) the Limited Common Area;
- (xii) the vegetation in any Undisturbed Buffer or Impervious Setback areas as provided in Section 6.34 hereof; and
- (xiii) lawn and landscaping for the Common Area and Limited Common Area as provided in Section 5.4 hereof.

(b) Without limiting the foregoing, the Association shall undertake, and Declarant does assign, any and all rights, duties and obligations of the Declarant pursuant to that certain Non-Exclusive License to Landscape entered into by Declarant and Cobb County dated April 1, 2014, as the same may be amended from time to time.

(c) The Association shall have the right, but not the obligation, to maintain property not owned by the Association and to enter into easements and cost sharing agreements where the Board has determined that such maintenance would benefit all or a group of Owners.

(d) The Board may authorize the officers of the Association to enter into contracts with any Person or Persons to perform maintenance on behalf of the Association.

5.2. Owner's Responsibility.

(a) General. Except for maintenance performed on or to a Lot by the Association, if any, all maintenance of a Lot and all structures, parking areas, landscaping and other improvements thereon, including, without limitation, all pipes, lines, ducts, conduits or other apparatus which serve only the Lot, whether located within or outside of the Lot's boundaries (which includes all gas, electricity, water, sewer, heat and air conditioning, and cable television lines, pipes, ducts, conduits and other apparatus serving only the Lot), shall be the sole

responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration.

(b) Common Area Maintenance Performed by an Owner or Occupant. Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Area or Limited Common Area by an Owner or Occupant which is the responsibility of the Association hereunder (including, without limitation, landscaping of Common Area) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association, even if the Association accepts the maintenance or repair.

(c) Restrictions. Each Owner must:

- (i) perform his or her responsibility in such manner so as not to unreasonably disturb other Persons in or on other Lots;
- (ii) promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible;
- (iii) not make any alterations in the portions of the Lot which are to be maintained by the Association, remove any portion thereof, make any additions thereto, or do anything with respect to the exterior or interior of such Lot or the structures thereon which would or might increase the Association's maintenance costs or jeopardize or impair the safety or soundness of any Lot or structure thereon, without first obtaining the written consent of the Board and all Owners and Mortgagees of the Lots affected; and
- (iv) 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.

(d) This provision shall not apply to any Lot(s) owned by the Declarant unless improved with a dwelling and occupied as a residence.

5.3. Failure to Maintain.

(a) If the Board 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 then the Association shall, except in the event of an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs or replacement deemed necessary. Except in an emergency situation, the Owner shall have 10 days from the date of the notice within which to complete such maintenance, repair or replacement, or, if such maintenance, repair or replacement is not capable of completion within such time period, to

commence such work within such 10 day period and diligently pursue completion within a reasonable period of time.

(b) If the Board determines that an emergency exists or that an Owner has not complied with the demand given by the Association as provided herein, the Association may provide such maintenance, repair or replacement to the Lot at such Owner's sole cost and expense, and all costs shall be added to and become a part of the specific assessment to which such Owner is subject, shall become and be a lien against the Lot, and shall be collected as provided herein for the collection of assessments.

(c) Notwithstanding the foregoing, if the need for maintenance, repair or replacement by the Association under this Section is caused through the willful or negligent act of any Owner or Occupant or their family, guests, lessees or invitees, and is not covered or paid for by insurance, in whole or in part, then all of the costs of the work may be specifically assessed against the Lot of such Owner or Occupant.

5.4. Common Area Landscaping and Lawn Maintenance.

(a) As provided in Section 5.1 above, the Association shall maintain and keep in good repair the lawn and landscaping improvements located on the Common Area and the Limited Common Area.

(b) Maintenance by the Association shall include, without limitation, the following:

- (i) lawn mowing on a regular basis;
- (ii) tree and shrub pruning;
- (iii) watering landscaped areas; and
- (iv) fertilizer and weed control treatments.

(c) The Board in its sole discretion may leave portions of the Community as undisturbed natural areas, may change the scope of the landscape maintenance in the Community at any time and from time to time, or may, with the consent of the Declarant (during the Declarant Control Period) change the level of lawn maintenance performed. The Board may promulgate rules setting forth the extent of landscaping maintenance to be performed by the Association.

5.5. Liability.

(a) Owners, Occupants and their guests shall use the Common Area and the Limited Common Area and all portions of the Community not contained within a Lot at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. All Owners and Occupants must inspect the Common Area and the Limited Common Area and any improvements located thereon for any defects, perils or unsafe conditions related to the use and

enjoyment thereof. The Association, Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for:

- (i) personal injury to any person occurring on the Common Area or the Limited Common Area;
- (ii) loss or damage to personal belongings used or stored on the Common Area, the Limited Common Area, or on any other portion of the Community; or
- (ii) loss or damage, by theft or otherwise, of any other property of an Owner or Occupant.

(b) In addition to the foregoing, the Association, Declarant and their respective officers, directors, representatives, agents and employees shall not be liable for injury or damage to any Person or property:

- (i) caused by the weather or by an Owner or any other Person;
- (ii) 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
- (iii) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair.

5.6 Party Fences.

(a) General Rules of Law to Apply. Each fence which shall serve and separate any 2 adjoining Lots shall constitute a party fence. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party fence shall be shared by the Owners who make use of the fence in equal proportions.

(c) Damage and Destruction. If a party fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner may restore it, and all other Owner or Owners who make use of the party fence, shall contribute to the cost of restoration thereof in equal proportions, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. If any dispute arises concerning a party fence, or under the provisions of this Section, the parties shall submit the dispute to resolution by arbitration and each party shall appoint one professional arbitrator knowledgeable in party fence issues. Should any party refuse to appoint an arbitrator within 10 days after written request therefore by the Board, the Board shall appoint an arbitrator for the refusing party and all costs associated therewith shall be a specific assessment against the refusing party. The arbitrators thus appointed shall appoint one additional arbitrator and the decision by a Majority of all three arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

Article 6

Use Restrictions and Rules

6.1. General. This Article, beginning at Section 6.2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may be amended only in the manner provided in Section 12.4 regarding amendment of this Declaration. The Board may, from time to time, without consent of the members, promulgate, modify or delete and rules and regulations applicable to the Lots, the Limited Common Area, and the Common Area. Such rules, regulations and use restrictions shall be distributed or otherwise made available (in a manner deemed reasonable by the Board) 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 at a regular or special meeting by a Majority of the Total Association Vote and, during the Declarant Control Period, by the Declarant.

6.2. Use of Lots.

(a) All Lots shall be used for single-family residential purposes exclusively, and no trade, business or business activity of any kind shall be carried on or conducted in, from or upon any Lot or any part of the Community at any time without the prior written approval of the Board, except that the Owner or Occupant residing at a Lot may conduct such ancillary business activities within the residence located on the Lot so long as:

- (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the residence;
- (ii) the business activity does not involve regular, frequent or conspicuous visitation of the Lot by employees, clients, customers, suppliers or other business invitees for business purposes;

- (iii) the business activity conforms to all zoning requirements for the Community;
- (iv) the business activity does not increase traffic in the Community (other than by a reasonable number of deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);
- (v) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;
- (vi) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board; and
- (vii) the business activity does not result in a materially greater use of common facilities or Association services.

(b) The terms "business" and "trade," as used herein, shall have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether:

- (i) such activity is engaged in full- or part-time;
- (ii) such activity is intended to or does generate a profit; or
- (iii) a license is required therefor.

(c) Notwithstanding anything to the contrary herein, this Section shall not apply to activities of the Association nor shall it be construed as prohibiting the Declarant or its respective affiliates from maintaining model homes, speculative housing or sales and construction trailers on Lots in the Community.

(d) Leasing of a Lot shall not be considered a trade, business or business activity. Lots may be leased for residential purposes, subject to the restrictions set forth at Section 6.30.

6.3. Signs.

(a) No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Board except:

- (i) one professional security sign consistent with the Community-Wide Standard not to exceed 4 inches by 4 inches in size;

- (ii) such signs as may be required by legal proceedings;
- (iii) reasonable and appropriate signs erected by the Board, Declarant and their respective affiliates, which may include signs related to the development, construction, marketing and sales of Lots in the Community; and
- (iv) in connection with a bona-fide offer to sell a Lot, 1 professionally lettered "For Sale" sign consistent with the Community-Wide Standard may be displayed on the Lot, but only if
 - (A) the sign has a maximum area of 4 square feet and a maximum height of 4 feet above ground level, and
 - (B) the content of the sign and anything else attached to, associated with or in the vicinity of the sign states or conveys only that the residence is for sale and the name and telephone number of the person to contact for additional information.

(b) Any other type of "For Sale" sign shall not be permitted in the Community. No "For Rent" or other leasing signs may be posted anywhere on a Lot. The Board may 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.

(c) The Board may impose a fine against any Owner or Occupant of up to \$500.00 per day for violations of this Section in addition to any other remedies of the Association. Any fine imposed pursuant to this Section shall be deemed an assessment against the Lot and may be collected in the same manner as provided herein for the collection of assessments.

6.4. Vehicles.

(a) The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, all-terrain vehicles, four-wheelers, trucks, campers, buses, vans, automobiles and limousines.

(b) Vehicles shall not be parked on the Common Area (except passenger non-commercial automobiles parked in designated parking areas or parking spaces while the users thereof are using the Common Area) or on any other portion of the Community other than the driveway and the garage.

(c) All vehicles shall be parked within garage parking spaces, unless and except to the extent that the Occupants of a Lot shall have more vehicles than the number of garage parking spaces serving their Lot. Vehicles may be parked in the driveway serving a Lot only after all of the garage parking spaces serving such Lot have vehicles parked in them. Any vehicle parked on a driveway may not encroach onto any street, alley, sidewalk or other landscaped area.

(d) Disabled vehicles, stored vehicles, boats, trailers, campers, buses, vans (except minivans or utility vehicles used as non-commercial passenger vehicles), trucks (except pick-up trucks and sport utility vehicles), recreational vehicles (for example, without limitation, RV's and motor homes), vehicles used primarily for commercial purposes and vehicles with commercial writing on their exteriors are prohibited from being parked in the Community, except in enclosed garages. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writing on their exteriors shall be allowed temporarily in the Community during normal business hours for the purpose of serving any Lot or the Common Area. No such vehicle shall be authorized to remain in the Community overnight or for any purpose, without the prior written consent of the Board, except to the extent it is there to provide services to a Lot or the Common Area. For purposes of this paragraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is inoperable. A vehicle shall be considered "stored" if it remains in the Community for 3 consecutive days or longer without being moved and without the prior written permission of the Board.

(e) If any vehicle is parked on any portion of the Common Area in violation of this Section or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 24 hours the Association (if permitted by law to do so) may cause a private towing service to tow the vehicle or may request or cause Cobb County to tow the vehicle. The notice shall include the name and telephone number of the person or entity which will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If 24 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within 6 months of such notice, the Association (if permitted by law to do so) may cause a private towing service to tow the vehicle or may request or cause Cobb County to tow the vehicle, in accordance with the notice, without further notice to the Owner or user of the vehicle. A vehicle that is moved temporarily to circumvent the limitation in this paragraph will be automatically (without further notice) considered in violation of this paragraph if the circumstances that led to the initial notice of violation re-occur. If a vehicle is parked on the Private Drive (other than in designated parking spaces) or is extending from a driveway into a street or alley such that it is blocking another vehicle or access to a Lot, is obstructing the flow of traffic, or otherwise creates a hazardous condition, no notice shall be required and the Association (if permitted by law to do so) immediately may cause a private towing service to tow the vehicle or may request or cause Cobb County to tow the vehicle.

(f) If a vehicle is towed in accordance with this Section, neither the Association nor its directors, officers or agents, nor the Declarant shall be liable to any person for any claim of damage or otherwise as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

(g) Notwithstanding anything to the contrary in this Section 6.4, the Declarant and its respective agents, subcontractors and assigns shall have the right, during regular business hours, to park vehicles on any and all streets within the Community as needed in order to facilitate the construction, development, sale of homes, and build out of the Community.

(h) All parking shall be subject to such further rules and regulations as the Board may adopt from time to time, in its discretion.

6.5. Occupants Bound. All provisions of the Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants of any Lot even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner. Unpaid fines shall constitute a lien on the Lot.

6.6. Animals and Pets.

(a) No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot, 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.

(b) No pets shall be kept, bred or maintained for any commercial purpose.

(c) No dog runs, runners or exterior pens for household pets shall be erected or maintained on any Lot unless approved in accordance with the provisions of Section 6.9.

(d) Dogs shall at all times when outside of a dwelling located on a Lot be kept on a leash or otherwise under the physical control of a responsible person.

(e) An Owner's failure to remove fecal matter or other solid waste left on any Common Area or Lot by an animal owned by an Occupant of such Owner's Lot (or their guests or invitees) shall be conclusively deemed to be a nuisance, and shall subject such Owner to such reasonable penalties as may be determined by the Association, including without limitation, upon repeated violations, the removal of such animal as described above.

(f) All Owners must control their pets at all times, whether or not such Owners are present, in a manner that will prevent any pet from (all of the following as determined by the Association in its sole discretion):

- (i) making noise at objectionable sound levels for extended periods of time, whether continuously or intermittently;
- (ii) endangering the health or safety of other Owners, their families, guests or invitees or creating fear in other Owners as to the safety of themselves, their families, guests or invitees; or
- (iii) otherwise constituting a nuisance or inconvenience to the Owner(s) or Occupant(s) of any other Lot.

(g) 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. If an 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 shall be a specific assessment against the Lot of such Owner.

(h) Pets in the Community shall be subject to such further rules and regulations as the Board may adopt from time to time, in its discretion.

6.7. Nuisance.

(a) Each Owner and Occupant must prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his or her Lot. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye. No shall any substance, thing or material will be kept upon any Lot 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 upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property adjacent to the Lot. Owners and Occupants shall not maintain any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

(b) Notwithstanding anything to the contrary herein, each Owner and Occupant acknowledges that the Declarant and its respective agents and subcontractors may engage in construction activities on one or more Lots in the Community and further agrees that such construction activities shall not be deemed a nuisance.

6.8. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities that might tend to cause disorderly, unsightly or unkempt conditions shall not be pursued or undertaken in any part of the Community. This includes (and specifically prohibits), without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles, engines and other mechanical devices.

6.9. Architectural Standards.

(a) No exterior construction, alteration, addition or erection of any nature whatsoever (including, without limitation, fences, pools, tennis courts, exterior lighting, landscaping, trees, treehouses and play equipment) shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant or its affiliates, the Association, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein.

(b) No exterior construction, addition, erection or alteration shall be made unless and until the plans and specifications showing at least the nature, kind, shape, height, materials and location shall have been submitted in writing to, actually received by, and approved in writing by the Board. The Board may promulgate written guidelines for the exercise of this review. The Board shall be the sole arbiter of such plans and specifications and may withhold approval on any reasonable basis, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. If the Board fails to approve or to disapprove plans and specifications within 60 days after such plans and specifications have been actually received by it, such plans and specifications will be deemed approved. However, all activities pursuant to plans which have been deemed approved must be consistent with such plans and must be consistent and in accordance with, and may not violate, this Declaration and any design guidelines.

(c) The Board may adopt written architectural and landscaping guidelines ("Architectural Guidelines") and application and review procedures, which may provide for a review fee. The Architectural Guidelines or the application and review procedures may be modified, in whole or in part, repealed or expanded by the Board at any time and from time to time at its sole discretion. If the Board modifies, expands or repeals all or any portion of the Architectural Guidelines or the application and review procedures, said new Architectural Guidelines or application and review procedures 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. The Board shall make the Architectural Guidelines available to Owners and Occupants who seek to engage in construction upon all or any portion of their Lot and such Owners and Occupants shall conduct their operations strictly in accordance therewith and with the provisions of this Article 6.

(d) All Owners and Occupants of Lots are hereby notified that the use of their Lots is limited by the Architectural Guidelines as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected, that the Architectural Guidelines may change from time to time, and that such changed Architectural Guidelines may or may not be set forth in an instrument recorded in the Cobb County, Georgia land records.

(e) Architectural Review Committee. The Board 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. The Board 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. If all or any portion of such rights, powers and authorities are granted to an ARC, this Section 6.9 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 Section 6.9 were a reference to the ARC. Notwithstanding anything herein to the contrary, the Board shall have the sole right and authority to appoint and remove the members of the ARC.

(f) Any member of the Board shall have the right, during reasonable hours, to enter upon any property to determine whether or not these restrictive covenants have been or are being

complied with and such Person or Persons shall not be deemed guilty of trespass by reason of such entry. Nothing herein shall authorize entry into a dwelling located on a Lot without the permission of the Owner.

(g) As a condition of any approval granted under this Section, the Owner making the application, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibility for the maintenance, repair, replacement and insurance to and on any change, modification, addition or alteration. In the discretion of the Board, an Owner may be made 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.

(h) New Construction. Notwithstanding anything to the contrary in this Section 6.9, during the Declarant Control Period, Declarant shall have the sole right, power and authority to review and approve all plans and specifications for new home construction in the Community. Upon the termination of the Declarant Control Period or upon the voluntary surrender of such right by Declarant in a document executed and recorded in the land records, the Board shall have the right to review and approve all plans and specifications for new home construction in the Community.

(i) Limitation on Liability. PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN, QUALITY OF MATERIALS, COMPLIANCE WITH ZONING CONDITIONS, BUILDING CODES, PERMITTING REQUIREMENTS OR OTHER LOCAL OR GOVERNMENTAL LAWS AND ORDINANCES GOVERNING CONSTRUCTION IN THE COMMUNITY. BY APPROVING PLANS AND SPECIFICATIONS, THE DECLARANT, THE BOARD, ITS MEMBERS, AND THE ASSOCIATION DO NOT ASSUME LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS OR FOR VIOLATIONS OF BUILDING CODES, ZONING CONDITIONS, PERMITTING REQUIREMENTS OR OTHER VIOLATIONS OF LOCAL LAWS AND ORDINANCES GOVERNING CONSTRUCTION IN THE COMMUNITY. DECLARANT, ITS PARTNERS AND AFFILIATES, THE ASSOCIATION, THE BOARD AND THE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES AND AGENTS OF ANY OF THEM, SHALL NOT BE LIABLE IN DAMAGES OR OTHERWISE TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS, BY REASON OF ANY MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR THE FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS AND SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS AND SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSONS AND OWNERS WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, ITS PARTNERS AND AFFILIATES, THE ASSOCIATION, THE BOARD OR THE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES AND AGENTS OF ANY OF THEM, TO RECOVER ANY DAMAGES OR FOR ANY OTHER PURPOSE, AND SUCH PERSONS AND OWNERS HEREBY RELEASE, REMISE, QUITCLAIM AND COVENANT NOT TO SUE FOR ALL CLAIMS, DEMANDS AND CAUSES OF ACTION, ARISING OUT OF OR IN CONNECTION WITH ANY

MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR THE FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS AND SPECIFICATIONS. ALL SUCH PERSONS AND OWNERS HEREBY WAIVE THE PROVISIONS OF ANY LAW WHICH PROVIDE THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

- (j) This Section 6.9 shall not apply to any activities of the Declarant or its affiliates.

6.10. Antennas and Satellite Dishes.

(a) No transmission antennas or satellite dishes of any kind, and no direct broadcast satellite ("DBS") antennas or multi-channel multi-point distribution service ("MMDS") antennas larger than 1 meter in diameter, shall be placed, allowed or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board. DBS and MMDS antennas and satellite dishes 1 meter or less in diameter, antennas designed to receive or transmit fixed wireless signals and television broadcast service antennas (each a "Permitted Antenna") may be installed only if reasonably screened and located as approved by the Board and installed in accordance with the rules and regulations of the Federal Communications Commission and of the Association, both as may be amended from time to time. However, neither the Board nor the Association may restrict the location of a Permitted Antenna if such restriction:

- (i) imposes unreasonable delay or prevents the use of the antennae;
- (ii) unreasonably increases the cost of installation; or
- (iii) an acceptable quality signal cannot otherwise be obtained.

(b) The Board and Declarant (and its affiliates) reserve the right to (but shall not be obligated to) erect any type and size of master antenna, satellite dish or other similar master system for the benefit of the Community. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an individual outdoor antenna or similar device would be the most cost-effective way to receive the signals sought to be received.

6.11. Gardens, Basketball Goals, Etc. Any landscaping or garden planting on any Lot may be done only in accordance with the Architectural Guidelines or, if Architectural Guidelines have not been established, with prior written consent of the Board. Overseeding of fescue lawns and sodding of lawns with Bermuda or zoysia grasses shall not require prior Board approval. No vegetable garden, hammocks, statuary or recreational equipment, including, without limitation, basketball goals or metal swingsets, may be placed, erected, allowed or maintained within the Community without the prior written consent of the Board or in compliance with Architectural Guidelines.

6.12. Tree Removal.

(a) No trees shall be removed without the express prior consent of the Board, except for:

- (i) trees removed by the Declarant or its respective affiliates; and
- (ii) diseased or dead trees.

(b) In addition to all other remedies available to the Board, violating Owners may be required to plant trees of comparable size, type and density of those removed or the Board may plant such trees as are reasonably deemed necessary by the Board at the sole expense of the violating Owner. The Association and Owners shall also comply with all zoning conditions and local ordinances regarding tree removal. If there is a conflict between the provisions of this Section and any zoning conditions or local ordinances, the more restrictive provision shall control.

6.13. Lighting.

(a) Notwithstanding Section 6.9 above, the following exterior lighting may be installed without the necessity of obtaining the prior approval of the Board:

- (i) seasonal decorative lights during the holiday season, subject to any rules or regulations promulgated by the Board;
- (ii) illumination of model homes and entrance features constructed by the Declarant or its affiliates; and
- (iii) other lighting originally installed by the Declarant or its affiliates.

(b) All exterior lighting must comply with the Architectural Guidelines. If the proposed lighting does not comply with the Architectural Guidelines, the lighting plan must be submitted for review and approval in accordance with Section 6.9. Implementation of the lighting plan may not take place until approval has been given by the ARC.

6.14. Drainage.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant of any Lot may obstruct or re-channel the drainage flows after the location and installation of drainage swales, storm sewers or storm drains. Each Owner, however, has the obligation to clear and maintain the flow of all storm water drainage facilities located on and used exclusively in connection with that Owner's Lot or the improvements located thereon.

(b) Declarant, for itself and its affiliates, reserves the right to prepare sloping banks, cut or fill, on a slope on all streets and roads. Declarant, for itself and its affiliates, hereby reserves a perpetual easement across all Community property for the purpose of altering drainage

and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

6.15. Sight Distance at Intersections. All property located at street intersections shall be so landscaped as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain at any corner where this would create a traffic or sight problem.

6.16. Clotheslines, Garbage Cans, Woodpiles, Etc.

(a) No clotheslines shall be placed, allowed or maintained upon any portion of the Community, including any Lot.

(b) Garbage cans, woodpiles, and other similar items shall be located or screened so as to be concealed from the view of neighboring Lots, streets and property located adjacent to the Lot. All rubbish, trash and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. No garbage or trash shall be placed on the Common Area, temporarily or otherwise.

(c) Declarant, however, hereby expressly reserves the right to dump and bury rocks on property within the Community as needed for efficient construction.

(d) The Association may, but shall not be required to, contract with a private trash collection company to pick up all usual and customary household trash on a regular basis. While the removal of normal household trash will be covered by such contract and included in the annual assessment, additional charges may be incurred by the Association for the removal of used appliances or other large items, which costs may be specifically assessed against the applicable Lot. 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 24 hours.

(e) Trash removal and recycling shall be subject to such further rules and regulations as the Board may adopt from time to time, in its discretion.

6.17. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board. Declarant, however, hereby expressly reserves the right to replat any Lot(s) or other property in the Community with the consent of the Owner thereof. Any such division, boundary line change or replatting shall not be in violation of the applicable subdivision and zoning regulations.

6.18. Firearms and Fireworks. The display or discharge of firearms or fireworks within the Community is prohibited. However, the display of lawful firearms is permitted by law enforcement officers and is also permitted for the limited purpose of transporting firearms to or from a Lot. The term "firearms" includes, but is not limited to, B-B guns, pellet guns, archery

equipment and firearms of all types, regardless of size. The term "fireworks" shall include, but not be limited to, those items listed in O.C.G.A. Section 25-10-1, as amended.

6.19. Solar Devices. No artificial or man-made device which is designed or used for the collection of or heating by solar energy or other similar purposes shall be placed, allowed or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board.

6.20. Fences. Except for fences installed by the Declarant or the Association, no fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board. The Board may issue guidelines detailing acceptable fence styles or other specifications that must be followed by all Owners. No fences may be composed primarily of metal products.

6.21. Exterior Colors. The exterior of all improvements, including, without limitation, residences, constructed, erected, allowed or maintained upon any Lot must be painted or repainted in a color used by Declarant or its affiliates in the original construction and marketing of residences within the Community, or in accordance with applicable Architectural Guidelines. If the proposed color does not comply with the Architectural Guidelines, the color selection must be submitted for review and approval in accordance with Section 6.9. Implementation of the exterior color may not take place until approval has been given by the ARC.

6.22. Detached Structures.

(a) Except for detached garages or other detached structures installed by Declarant or its affiliates, no detached structure shall be placed, erected, allowed or maintained upon any Lot or within the Community without the prior written consent of the Board. Any detached structures that are permitted must be consistent in design materials and color with the dwelling on the Lot. Storage sheds or structures are specifically prohibited. No trailers, campers, vehicles, shacks, tents, any garages (attached and detached), barns or other structures may be used as a residence or living space in any manner whatsoever, either temporarily or permanently, within the Community. Specifically, no garage, including, but not limited to, attached and detached garages, shall be utilized in any manner whatsoever as an additional living space or residence.

(b) Notwithstanding anything to the contrary herein, nothing in this Section shall be construed to prevent Declarant and 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 from developing, constructing, marketing, or maintaining model homes or speculative housing or sales and construction trailers on Lots in the Community.

6.23. Entry Features and Street Signs. Owners shall not alter, remove or add improvements to any entry features or street signs constructed within the Community, or any part of any easement area associated therewith, without the prior written consent of the Board.

6.24. Swimming Pools. No swimming pools shall be permitted in the Community unless installed by the Declarant. However, portable, inflatable wading pools designed for use by small children shall be permitted so long as they are properly maintained and stored out of view of neighboring Lots and the public streets. No portable, inflatable wading pool may be placed in the Limited Common Area or otherwise on the south side of homes built on Lots 1 through 9.

6.25. Garage Sales. No garage sale, yard sale, flea market or similar activity shall be conducted in the Community without the prior written consent of the Board. If permitted, such activities shall be subject to all conditions imposed by the Board.

6.26. Window Coverings; Window Treatments. All shades, drapery linings and other window treatments visible from the exterior of a Lot shall be white, off-white or such other acceptable color determined by the Board or as set forth in the Architectural Guidelines. No foil or other reflective material shall be used on any windows for sun screens, blinds, shades or any other purpose. If the proposed window covering or treatment does not comply with the Architectural Guidelines, the window covering or treatment must be submitted for review and approval in accordance with Section 6.9. Implementation of the window coverings or treatments may not take place until approval has been given by the ARC.

6.27. Use of Common Area. There shall be no obstruction of the Common Area or the Limited Common Area, nor shall anything be kept, parked or stored on any part of the Common Area or the Limited Common Area without the prior written consent of the Board.

6.28. Prohibition of Damage.

(a) Without the prior written consent of the Board, nothing shall be done or kept in the Community which would:

- (i) increase the rate of insurance that the Association is obligated to obtain and maintain hereunder;
- (ii) be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body; or
- (iii) increase the common expenses of the Association.

(b) No Owner shall do any work which, in the reasonable opinion of the Board, would:

- (i) jeopardize the soundness or safety of the Community or any structure located within the Community;
- (ii) reduce the value thereof; or
- (iii) impair any easement or hereditament thereto.

(c) No damage to or waste of the Common Area or Limited Common Area, or any part thereof, or of the exterior of any Lot shall be permitted by any Owner or member of his or her family or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees or Occupants of his or her Lot.

6.29. Window Air-Conditioning Units. No window air conditioning units or window fans shall be installed on any Lot in the Community.

6.30. Leasing.

(a) General

- (i) In order to preserve the character of the Community as predominantly owner-occupied, and to comply with the eligibility requirements for financing in the secondary mortgage market, leasing of Lots shall be governed by the applicable zoning conditions and the restrictions imposed by this Section. As used herein, "leasing" shall mean the regular, exclusive occupancy of a Lot by any Person(s) other than the Owner for which the Owner receives any direct or indirect monetary or economic benefit. The occupancy of a Lot by a roommate of an Owner then occupying a Lot and occupancy of a Lot by a member of an Owner's family shall not constitute leasing. Except as provided herein, the leasing of Lots shall be prohibited.
- (ii) Owners desiring to lease their Lots may do so only if they have applied for and received from the Board a "leasing permit," or "hardship leasing permit" pursuant to an application process to be promulgated by the Board. Such a permit, upon its issuance, will allow an Owner to lease such Owner's Lot in strict accordance with the terms of the permit and this Section. The Board shall have the authority to establish conditions as to the duration and use of such permits consistent with this Section. Each leasing permit or hardship leasing permit, as applicable, shall be valid only as to a specific Owner and Lot and shall not be transferable between either Lots or Owners (including a subsequent Owner of a Lot for which a permit was issued to the Owner's predecessor in title).

(c) An Owner's application for a leasing permit shall be considered if the number of then current, outstanding leasing permits for Lots, including the request then under consideration, does not exceed the "Maximum Allowable Leases," defined as 10% of the total Lots in the Community. A leasing permit shall be automatically revoked upon the happening of any of the following events:

- (i) the sale or transfer of the Lot to a third party (excluding sales or transfers to

- (A) an Owner's spouse,
- (B) a person cohabiting with the Owner, and
- (C) a corporation, partnership, company, or legal entity in which the Owner is a principal);

- (ii) the failure of an Owner to lease such Owner's Lot within 90 days of the leasing permit having been issued;
- (iii) the failure of an Owner to have such Owner's Lot leased for any consecutive 90-day period thereafter; or
- (iv) an Owner occupies the Lot.

(d) If the number of current leasing permits, including the request then under consideration, exceeds the Maximum Allowable Leases, no additional leasing permits shall be issued until the number of outstanding current leasing permits, including the next request under consideration, would fall below the Maximum Allowable Leases. Owners who have been denied a leasing permit shall automatically be placed on a waiting list for a leasing permit and shall be issued the same if they so desire when the number of current outstanding leasing permits, including the next one to be issued, falls to less than the Maximum Allowable Leases.

(e) Hardship Leasing

- (i) If leasing permits equaling the Maximum Allowable Leases have been issued, an Owner who believes that he or she must lease his or her Lot to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board may reasonably require. Those Owners who have complied with this Section, have demonstrated that the inability to lease their Lot would result in undue hardship, and have obtained written Board approval for a hardship leasing permit may lease their Lots for such duration as the Board reasonably determines is necessary to prevent undue hardship in accordance with the terms of the hardship leasing permit.
- (ii) For purposes of this Section, undue hardship shall include, but not be limited to, the following situations:
 - (A) a Lot Owner must relocate his residence outside the greater Atlanta metropolitan area and cannot, within 6 months from the date that the Lot was placed on the market, sell the Lot except at a price below the current appraised market value, after having made reasonable efforts to do so;

- (B) the Owner is deceased and the Lot is being administered by a personal representative; or
- (C) the Owner takes a leave of absence from employment or temporarily relocates for employment purposes and intends to return to reside in the Lot, in which case the Lot Owner must reapply every year for renewal of the hardship exception.

(iii) In determining whether to issue a hardship leasing permit the Board may consider 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.

(f) Leasing Provisions. Any leases that are permitted have to satisfy the following provisions:

- (i) Notice. At least 7 days prior to entering into the lease of a Lot, the Owner shall provide the Board with a copy of the proposed lease agreement.
- (ii) Form of Lease. The Board may approve or disapprove the form of said lease. If a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.
- (iii) General. Lots may be leased only in their entirety. No fraction or portion of a home located on a Lot may be leased. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. Within 10 days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Lot. The Owner must provide the lessee copies of the Governing Documents.
- (iv) Limitation on Board's Approval. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed

lessee. The Board's approval or disapproval shall be limited to the form of the proposed lease.

- (v) Liability for Assessments, Use of Common Area, and Compliance with Declaration, Bylaws, and Rules and Regulations. Each Owner covenants and agrees that any lease of a Lot 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 Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:
- (A) Compliance with Declaration, Bylaws, and Rules and Regulations. The Owner's lessee shall comply with all provisions of the Governing Documents, and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure such compliance. The Owner shall cause all Occupants of the Lot to comply with the Governing Documents and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any such violation. If the lessee, a guest of the lessee, or a person living with the lessee, violates the Governing Documents for which a fine is imposed, notice of the violation shall be given to the Owner and the Owner's lessee, and such fine may be assessed against the lessee in accordance with Section 3.20 of the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, 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 Lot
- (B) Violations of the Governing Documents. Any violation of the Governing Documents by the lessee, any Occupant, or any guest of 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. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Governing Documents, including, without limitation, the power and authority as attorney-in-fact on behalf and for the benefit of the Owner to evict the lessee. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Lot.
- (C) Use of Common Area. The Owner transfers and assigns to the Owner's lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Area.

(D) Liability for Assessments. If an Owner who is leasing a Lot fails to pay any annual, special or specific assessment or any other charge for a period of more than 30 days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual, 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's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to Owner. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release an Owner from any obligation, including the obligation for assessments, for which an Owner would otherwise be responsible.

(g) Mortgagee Exemption. The provisions of this Section shall not apply to any Mortgagee in possession of a Lot through foreclosure or otherwise as a result of the exercise of any rights arising out of a first priority Mortgage on a Lot.

(i) Rights Reserved by Declarant.

(i) Notwithstanding the restriction on the leasing of Lots as described herein, Declarant may grant an Owner the right to lease a Lot for any reason and the extent and duration of said privilege granted by Declarant shall be determined solely by Declarant. Any ability to lease a Lot granted by the Declarant which extends beyond the termination of Declarant's rights under this Declaration shall be valid and may not be terminated by the Association so long as the Owner complies with the terms and conditions imposed by Declarant.

(ii) This Section shall not apply to any Lot(s) owned by the Declarant.

6.31. Traffic Regulations.

(a) All vehicular traffic on the Private Drive shall be subject to the provisions of the state and local laws concerning the operation of motor vehicles on public streets.

(b) The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable

safety measures and speed limits similar to those in force on public streets, within the Community. 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 violation thereof. If there is a conflict between such provisions of state and local laws and such rules and regulations promulgated by the Association, the rules and regulations of the Association shall govern.

(c) 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 streets or alleys in the Community shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all Owners and Occupants.

6.32. Flags. The Board of the Association may promulgate reasonable rules and regulations with respect to the display of flags in the Community, including, without limitation, regulating the size of flags that may be displayed and imposing reasonable time, place and manner restrictions pertaining to the display of the United States flag. 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 Lot in the Community in contravention of the Freedom to Display the American Flag Act of 2005, or any other federal or state laws, rules or regulations.

6.33. Stream Buffer. Land-disturbing activities shall not be conducted on any Lot, Common Area, or Limited Common Area within (i) any stream buffer area as depicted on the recorded subdivision plats for the Community, except with prior written approval under Section 6.9. hereof and compliance with Georgia law, including, without limitation, the Control of Erosion and Sedimentation Act, O.C.G.A. Section 12-7-1, et seq., as amended from time to time, and (ii) the Conservation Easement as described in Section 6.36.

6.34. Buffer and Improvement Setback.

(a) The Community will contain one or more "Impervious Setback" and/or "Undisturbed Buffer" areas, or similarly named areas, as may be shown on the recorded subdivision plat(s) for the Community. Any buffer areas shall exist as undisturbed natural buffer areas of existing vegetation.

(b) Owners shall not disturb any Undisturbed Buffer areas in any way, including, without limitation, the construction of any improvements in the Undisturbed Buffer, landscaping, or cutting of trees, bushes or other vegetation. No improvements may be erected within any Impervious Setback area. Owners are not allowed to maintain or trim the vegetation in any Undisturbed Buffer or Impervious Setback areas.

(c) The Association will maintain and trim the vegetation in any Undisturbed Buffer or Impervious Setback areas at the direction of the Board, but only in accordance with all applicable zoning and code requirements. Any Owner of a Lot directly adjacent to an

Undisturbed Buffer area is a third-party beneficiary under this Section 6.34 and may enforce the obligations hereunder against the Association.

6.35 Walking Trails.

(a) Except as herein provided, any walking trails, now or hereafter created, within the Community shall be used as foot paths only. Bicycles, roller blades, skate boards, go-carts, minibikes, scooters or motorcycles, with or without electric motors, or similar wheeled means of transportation or recreation shall not be permitted on the paths in the Community. This provision shall not prohibit the use of a path by any person with a disability by the use of a wheelchair or other necessary transportation device.

(b) The Board may adopt such rules as may be deemed appropriate concerning the use of the paths. This provision shall not apply to concrete sidewalks located along the public streets within the Community. The Association shall maintain any such walking trails which are not maintained by a government entity or volunteers affiliated with a governmental entity.

6.36 Cobb County Agreements.

(a) Conservation Easement.

- (i) Some of the Community is encumbered by a Deed of Conservation Easement ("Conservation Easement") between the Declarant and Cobb County, Georgia, which may be recorded in the Cobb County, Georgia land records. Declarant hereby reserves the right, without obligation, to enter into and record any and all amendments, modifications and other documents relating to the Conservation Easement in its sole and absolute discretion, without any approval of or vote by the Association or the Owners. Owners and the Association shall comply with all of the foregoing.
- (ii) Declarant hereby assigns to the Association, and the Association hereby assumes, all of the rights and obligations of Declarant, including, without limitation, for use, maintenance, inspection, repair and replacement of the property referenced in the Conservation Easement and/or any other maintenance agreement, including, without limitation any stormwater maintenance agreement, as the same may be amended and/or supplemented from time to time, and appurtenant facilities as set forth in those documents. The Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of any of the encumbered property within the Community. Any Conservation Easement area shall remain primarily as undisturbed natural areas; provided, however, any Conservation Easement area may be used for other purposes consistent with the foregoing documents and as permitted by the Association and/or Cobb County as applicable. The Board may issue rules and regulations on the permissible

use of any Conservation Easement areas by Owners, Occupants and guests, which rules and regulations shall not be inconsistent with the purposes and intentions of the foregoing documents or applicable ordinances of Cobb County.

(b) Georgia Power Encroachment Agreement. Declarant hereby assigns to the Association, and the Association hereby assumes, all of the rights and obligations of Declarant, including, without limitation, for use, maintenance, inspection, repair and replacement set forth in that certain Encroachment Agreement for Easement between Declarant and Georgia Power Company, which may be recorded in the Cobb County, Georgia land records, as the same may be amended from time to time (the "GPC Easement"). The Association acknowledges and agrees that any landscaping and plantings located within the easement area established by the GPC Easement shall comply with any and all rules and/or guidelines established by Georgia Power Company, including, without limitation, height restrictions not to exceed ten feet for such plantings.

Article 7

Insurance and Casualty Losses

7.1. Insurance Obtained by Association.

(a) The Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Area and the Limited Common Area, or required to be maintained by the Association under Section 5.1. Insurance obtained and maintained by the Association shall cover loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts. However, the Association's insurance will not cover an Owner's or Occupant's personal property (which shall be the sole responsibility of the Owner or Occupant, as applicable) or any structures or improvements located on a Lot.

(b) If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a public liability policy applicable to the Common Area and the Limited Common Area insuring the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least \$1,000,000.00. If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance.

(c) The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant or its affiliates, which may be under a blanket policy at the Declarant's sole discretion, and to reimburse the Person so providing or arranging the insurance coverage for the cost thereof. The Declarant or its affiliates shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant or its affiliate, as the case may be, and the

Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant or its affiliate, as the case may be, in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article 7 if it has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant or its affiliates.

(d) Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

(e) All such insurance coverage obtained by the Board shall be written in the name of the Association, on its own behalf and as trustee for the respective parties which may be benefited by such insurance, as their interests may appear. Such insurance shall be governed by the provisions hereinafter set forth:

- (i) All policies shall be written with a company authorized to do business in the State of Georgia.
- (ii) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (iii) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
- (iv) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if these are reasonably available.
- (v) All insurance policies shall be reviewed annually by one or more qualified Persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.
- (vi) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
 - (A) a waiver of subrogation by the insurer as to any claims against the Board, its manager, the Owners and their respective tenants, servants, agents and guests;
 - (B) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

- (C) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of the acts of any one or more individual Owners;
- (D) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any defect or the conduct of any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;
- (E) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
- (F) that no policy may be canceled, subjected to nonrenewal, or substantially modified without at least 30 days' prior written notice to the Association.

(f) 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.

(g) If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a fidelity bond or employees 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 Board's judgment. Such coverage, if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least 10 days' prior written notice to the Association.

(h) The Association shall also obtain construction code endorsements, steam boiler coverage and flood insurance, if and to the extent necessary to satisfy the requirements of The Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the U.S. Department of Veterans Affairs ("VA") or the U.S. Department of Housing and Urban Development ("HUD").

7.2. Individual Insurance.

(a) By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall obtain and maintain the following:

- (a) all-risk casualty insurance on the Lot and all structures constructed thereon, which shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard;
- (b) a liability policy covering damage or injury occurring on a Lot; and
- (c) insurance covering an Owner's or Occupant's personal property.

(b) The policies required hereunder shall be in effect at all times.

7.3. Damage and Destruction -- Property Insured by Association.

(a) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent 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) 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 60 days after the casualty, at least 75% of the Total Association Vote and the Declarant (in the case of property which primarily benefits or is available for use by all Lots), or Owners representing at least 75% of the applicable group or class of Lots and the Declarant (in the case of property which primarily benefits or is available for use by a group or class of Lots only) 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 60 days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

(c) 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 shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners (in the case of property which primarily benefits or is available for use by all Lots), or against all Owners in a particular group or class of Lots (in the case of property which primarily benefits or is available for use by such group or class of Lots only). 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.

(d) If it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then, and in that event, the property shall be restored to its natural state and 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.

7.4. Damage and Destruction – Lots. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within 75 days after such damage or destruction occurred or, where repairs cannot be completed within 75 days, they shall be commenced within such period and shall be completed within a reasonable period of time thereafter. Alternatively, the Owner may elect to demolish all improvements on such Lot and remove all debris therefrom within 75 days after such damage or destruction and such Lot shall thereafter be maintained in a neat and attractive condition consistent with the Community-Wide Standard and this Declaration. In the event of noncompliance with this provision, the Board shall have all enforcement powers specified in Section 12.1.

7.5. 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 are responsible hereunder.

Article 8

Annexation and Withdrawal of Property

8.1. Unilateral Annexation by Declarant.

(a) As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option from time to time at any time until 25 years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "B" attached hereto and by reference made a part hereof to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Cobb County, Georgia land records a Supplementary Declaration describing the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless a later effective date is provided therein. The Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property, as long as

covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of then Owners are not adversely affected.

(b) The rights reserved unto Declarant to subject additional land to this Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional 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.

8.2. Other Annexation. Subject to the consent of the owner thereof and consent of the Declarant (during the Declarant Control Period), upon the affirmative vote or written consent, or any combination thereof, of at least 2/3 of the Total Association Vote, the Association may annex other real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the land records of the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

8.3. Withdrawal of Property. During the Declarant Control Period, Declarant reserves the right to amend the Declaration to remove any portion of the Community then owned by Declarant or its respective affiliates or the Association (or if not so owned, removal/withdrawal may be accomplished with the written consent of the owner(s) of such property) from the coverage of this Declaration, so long as such withdrawal is not unequivocally contrary to the overall uniform scheme of development for the Community. This shall specifically include the right to withdraw Lots 30 and 31 from the coverage of this Declaration. Any such withdrawal shall be accomplished by the filing for record of an amendment to this Declaration describing the property being removed and shall be effective upon filing for record in the Office of the Clerk of the Superior Court of Cobb County, Georgia, unless a later effective date is provided therein. Such amendment shall be executed by the Declarant and the Owner(s) of the property being removed and shall not require the vote or consent of any other Person.

8.4. Additional Covenants, Restrictions and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplementary Declaration to additional covenants, restrictions and easements and/or modify the applicability of the covenants, restrictions and easements contained in this Declaration as to such property. Such additional covenants, conditions, restrictions and easements may be set forth in a Supplementary Declaration or a separate declaration of protective covenants or other document filed either concurrently with or after the annexation of the subject property. Any such document filed by the Declarant may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property. No Person shall record any declaration of covenants, conditions and restrictions, easements, or similar instrument without Declarant's review and written

consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Cobb County, Georgia land records. No such instrument recorded by any Person, other than the Declarant pursuant to this Section, may conflict with the Governing Documents.

Article 9 **Easements**

9.1. Easements for Encroachment and Overhang.

(a) The residential dwellings located on the Lots may have certain eaves, roof overhangs, building materials and other structures attached to the walls and roofs of such dwellings which may encroach over or extend into the air space, improvements and/or real property located on adjoining or continuous Lots and/or Common Area. All of the Lots and the Common Area shall be subject to reciprocal appurtenant easements for encroachments and for the maintenance, repair and replacement thereof as a result of construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement so long as such encroachment exists. If any such Lot, including any dwelling located thereon, is damaged or destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, the Owner of such Lot shall have an easement to reconstruct such encroachments in connection with the reconstruction of such dwelling.

(b) Easements shall also exist for encroachment upon the Common Area and/or Lots as necessary for the express purpose of maintenance, repair and restoration of any Lot, structure or improvement located thereon. The easements shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance, repair and restoration. The Owner of the Lot exercising the easement right shall be liable for the prompt repair of any damage to the property over which the easement is exercised which is caused by the maintenance, repair or restoration work. The damaged portions of such property shall be restored to substantially the same condition as existed prior to the damage. No easement for encroachment shall exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant or the Association.

9.2. Easements for Use and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area and the Limited Common Area which shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:

- (i) The Association may suspend the voting rights of a Lot Owner:
 - (A) for any period during which any assessment against such Owner's Lot remains unpaid, and

- (B) for a reasonable period of time, for an infraction of the Governing Documents.
- (ii) The Association may:
- (A) borrow money for the purpose of improving the Common Area, or any portion thereof, or for constructing, repairing or improving any facilities located or to be located thereon, and
 - (B) give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Area. The lien and encumbrance of any such Mortgage given by the Association must be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant and/or its affiliates, any Lot or Lot Owner, and/or the holder of any Mortgage, regardless of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community. Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, interests, options, easements or privileges herein reserved or established for the benefit of Declarant and/or its respective affiliates, any Lot or Lot Owner, and/or the holder of any Mortgage, regardless of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community). No such Mortgage given by the Association shall be effective unless the loan has been approved by the Declarant and, following the Declarant Control Period, at least 2/3 of the Total Association Vote.
- (iii) The Association may, acting through the Board and without a vote of the members, dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Area.
- (iv) The Association may dedicate, transfer or convey all or any portion of the Common Area subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless the dedication or transfer has been approved by Declarant and, following the Declarant Control Period, at least 2/3 of the Total Association Vote.
- (v) Use of Common Area and the Limited Common Area is subject to all other rights of the Association, the Declarant, Owners and Occupants set forth in this Declaration, any Supplementary Declaration, or in any deed conveying Common Area to the Association.

- (vi) Use of Common Area and the Limited Common Area is subject to encumbrances and other matters shown by the public records affecting title to the Common Area and the Limited Common Area.

(b) Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Area and the Limited Common Area and facilities located thereon to the members of his immediate family, his tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Lot if leased.

9.3. Association Easements for Utilities.

(a) There is hereby reserved to the Declarant and granted to utility providers and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installing, 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 utilities, as well as storm drainage and any other service, such as, but not limited to, a master television antenna system, cable television system, or security system, which the Declarant or Association might decide to have installed to serve the Community. However, such easement area shall not include any portion of a Lot within the outer perimeter of the dwelling structure.

(b) It shall be expressly permissible for the Declarant, the Association, or their respective designees, as the case may be, to install, repair, replace and maintain, or to authorize the installation, repair, replacement and maintenance of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

9.4. Easements for Association Maintenance. Declarant hereby grants to the Association a perpetual easement across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article 5. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

9.5. Easements for Maintenance and Repair. There shall be reciprocal appurtenant easements between adjacent Lots for the purpose of maintaining or repairing the improvements, including, without limitation, landscaping, located on each Lot, which easement shall extend to a distance of not more than 5 feet as measured from any point on the common boundary between the Lots and along a line perpendicular to such boundary at such point. The easement shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance or repair. The Lot Owner exercising this easement right shall be liable for the prompt repair of any damage to the Lot over which this easement is exercised which is caused by the maintenance or repair work. The damaged portions of such Lot shall be restored to substantially the same condition as existed prior to the damage.

9.6. Easements for Entry. In addition to the right of the Board to exercise self-help as provided in Section 12.2, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security and safety reasons, which right may be exercised by the property manager 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, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion or other hazard if an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

9.7. Easements for Entry Features and Street Signs. There is hereby reserved to the Declarant and granted to the Association, and their respective designees, an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of entry features and street signs for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and the right to grade the land under and around such entry features.

9.8. Easements for Drainage.

(a) There is hereby reserved by the Declarant and granted to the Association and to the appropriate county or city authority 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, installation, alteration, repair, replacement, and maintenance of 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.

(b) There is hereby reserved to the Declarant and granted to the Association a blanket easement across all Lots for creating and maintaining satisfactory drainage in the Community; provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the dwelling structure. It is anticipated that increased storm water run-off across downstream Lots will result from the construction of impervious surface in the Community. Neither the Declarant, the Association nor any other builder or Owner constructing according to plans and specifications approved under Section 6.9 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.

9.9. Easements for Private Drive.

(a) Declarant hereby grants, conveys, declares, creates, imposes and establishes a perpetual, non-exclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across the Private Drive. 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 Cobb County, Georgia, any reference to the Private Drive shall then and thereafter mean a reference to the Private Drive as actually constructed and depicted on the recorded subdivision plat.

(b) The right-of-way easement herein granted shall permit joint usage of such easement by:

(i) the Owners and Occupants of Lots 1 through 9 and (if there is vehicular access from Lot 10 to the Private Drive) Lot 10,

(ii) the legal representatives, successors and assigns of the Owners of Lots 1 through 9 and (if there is vehicular access from Lot 10 to the Private Drive) Lot 10, and

(iii) invitees and licensees of the Owners and Occupants of Lots 1 through 9 and (if there is vehicular access from Lot 10 to the Private Drive) Lot 10.

(c) Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any right-of-way easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional non-exclusive easements to third parties, over, under and across the easement area.

(d) Declarant hereby reserves for the benefit of itself and grants to the Association the perpetual nonexclusive right and easement upon, over and across the Private Drive for the installation, maintenance, and use of such Private Drive, sidewalks, traffic directional signs, grading for proper drainage of said Private Drive, and related activities and improvements.

(e) In connection with the creation of these easements, it is acknowledged and agreed that the Owner(s) of Lots 1 through 9 and (if there is vehicular access from Lot 10 to the Private Drive) Lot 10 which are benefited and burdened by the easements granted herein will be required to utilize the easements for access, ingress, egress to such Owner's Lots and that such easements are critical to the future use and enjoyment of such Lots. No Owner shall be allowed to change, alter or diminish the rights of an Owner of a Lot benefited by the easements except by an instrument executed by all of the Owners of Lots 1 through 9 and (if there is vehicular access from Lot 10 to the Private Drive) Lot 10, and recorded in the public real estate records of Cobb County, Georgia.

Article 10 **Condemnation**

10.1. Condemnation. If all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on behalf of the Association or on the written direction of all Owners of Lots subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for

all Owners. The provisions of Section 7.2 above, applicable to damage or destruction of property insured by the Association, shall govern replacement or restoration and the actions to be taken if the improvements are not restored or replaced. Any and all condemnation proceeds relating to Common Area shall remain the property of the Association. No portion of any condemnation proceeds related to Common Area shall be paid or payable to any Owners or their Mortgagees.

Article 11
Use of Recreational Facilities by Nonmembers

As of the date that this Declaration is recorded in the Cobb County, Georgia land records, Declarant does not intend to construct recreational facilities (other than walking trails) in the Community. However, in the event that Declarant or the Association constructs recreational facilities in the Community (whether on property currently within the Community, or after acquired property annexed pursuant to Section 8.1), the Declarant or the Association, as the case may be, will establish reasonable rules with respect to such recreational facilities. Such rules may provide for use by non-members of the Association.

Article 12
General Provisions

12.1. Enforcement. Each Owner and every Occupant of a Lot shall comply strictly with the Governing Documents, as they may be lawfully amended or modified from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed to his or her Lot, if any. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Governing Documents shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing against any Owner shall in no event be deemed a waiver of the right to do so thereafter against that Owner or any other Owner failing to comply in a similar manner. The Board shall have the right to record in the appropriate land records a notice of violation of the Governing Documents and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

12.2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Area to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. Unless an emergency situation exists, the Board shall give the violating Lot Owner 10 days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

12.3. Duration.

(a) The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, perpetually to the extent permitted by law. However, if Georgia law limits the period during which covenants restricting lands 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 provisions shall be:

- (i) automatically extended for successive periods of 10 years, unless a written instrument reflecting disapproval signed by the then Owners of at least 2/3 of the Total Association Vote and the Declarant (during the Declarant Control Period) has been recorded within the year immediately preceding the beginning of a 10 year renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated to the extent specified therein; or
- (ii) extended as otherwise provided by law.

(b) Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

12.4. Amendment.

(a) By Declarant. This Declaration may be amended unilaterally at any time and from time to time by Declarant:

- (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith;
- (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration;
- (iii) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or

- (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots subject to this Declaration. Any such amendment may not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing.

(b) During the Declarant Control Period, Declarant may unilaterally amend this Declaration for any other purpose (beyond the list outlined in the preceding paragraph). Any such amendment may not:

- (i) materially adversely affect the substantive rights of any Owners hereunder;
- (ii) adversely affect title to any Lot without the consent of the affected Owner; or
- (iii) adversely affect the rights of the holder of any security interest granted by Declarant encumbering any portion of the Community unless the holder thereof consents thereto in writing.

(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 at least 2/3 of the Total Association Vote and the consent of the Declarant (during the Declarant Control Period).

(d) General. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. During the Declarant Control Period, no provision of this Declaration which reserves or grants special rights to the Declarant and/or its respective affiliates shall be amended without the prior written consent of the Declarant and/or its respective affiliates affected by such amendment. Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in a court of competent jurisdiction in a county in which the Community is located within 1 year of the recordation of such amendment.

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

12.6. 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.

12.7. 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.

12.8. Conveyance of Property to Association; No Implied Rights.

(a) Declarant and its respective affiliates 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. This may include the conveyance of small strips or parcels of land throughout the Community that have not otherwise been conveyed to Owners, even if the strips or parcels do not have any use or the strips or parcels create an additional maintenance burden on the Association. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Area to be maintained by the Association for the benefit of all or a part of its members.

(b) During the Declarant Control Period, Declarant may, upon written notice to the Association, require the Association to reconvey to Declarant or its designee all or any portion of the Common Area, improved or unimproved, at no charge to Declarant or its designee, without a vote of the members of the Association, if all or a portion of the Common Area is:

- (i) found by Declarant to have been conveyed in error;
- (ii) needed by Declarant to make adjustments in property boundary lines; or
- (iii) reasonably determined by Declarant to be needed due to changes in the overall scheme of development for the Community.

(c) The Association hereby constitutes and appoints Declarant as the Association's agent and attorney-in-fact to accept/make on behalf of the Association any such conveyances and reconveyances and to execute on behalf of the Association any and all documents, including, without limitation, deeds, necessary or convenient to effectuate and document any of the foregoing conveyances and reconveyances, and all of the 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.

(d) Declarant and its affiliates shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and Declarant and its affiliates 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 Association shall also accept assignment of, and shall assume and agree to perform, any contracts entered into by Declarant and its affiliates for the benefit of the Association, its members or the Owners.

(e) Declarant may reserve, by condition, restriction, lease, license, easement or otherwise, such rights of use and enjoyment in and to all or any portion of the property conveyed as Declarant may reasonably require, so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any

subdivision plat, nor the use by the Owners or maintenance by the Association of any property, shall create any rights, easements or licenses in the Association or the Owners, express or implied, unless and until any such property, rights, easements or licenses are conveyed to the Association or the Owners, as the case may be, by an instrument recorded in the land/real estate records of the county where the property is located.

12.9. Indemnification. In accordance with, and to the full extent allowed by, the Georgia Nonprofit Corporation Code, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association), by reason of the fact that such Person is or was serving as a director or officer of the Association against any and all expenses, including attorney's fees, imposed upon or reasonably incurred in connection with any action, suit or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification hereunder shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the Person is proper under the circumstances.

12.10. Construction and Sale Period.

(a) Notwithstanding any provisions contained in the Governing Documents, the Declarant hereby expressly reserves unto itself, and its respective successors and assigns a non-exclusive, perpetual right, privilege, and easement with respect to the Community for the benefit of the Declarant and its respective successors and assigns, over, under, in, and/or on the Community, without obligation and without charge, for the purposes of taking all actions related to or connected with construction, installation, relocation, development, sale, maintenance, repair or replacement in the Community and any other property now owned or which may in the future be owned by the Declarant in accordance with Declarant's right to annex additional property.

(b) The reserved easement shall constitute a burden on the title to the Community and specifically includes, but is not limited to:

- (i) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; the right to tie into any portion of the Community with streets, driveways, parking areas and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee payable to the Association or any Owner for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community;
- (ii) the right to use (continually or from time to time) without charge any clubhouse or similar structure and appurtenant recreational facilities, if any, for business purposes or company functions and any similar use,

including, but not limited to, sales and marketing meetings, offices for sales or other employees and agents, a design studio and employee parties; and

- (iii) the right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, construction trailers and sales offices in the Community.

(c) No rights, privileges and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Community, but shall be held independent of such title, and no such right, privilege or easement shall be surrendered, conveyed or released unless and until and except by delivery of a quitclaim deed from the Declarant releasing such right, privilege or easement by express reference thereto.

(d) During the Declarant Control Period, any proposed amendment to this Section 12.10 shall require the prior written consent of the Declarant.

12.11. Books and Records.

(a) Inspection by Members and Mortgagees. The Governing Documents, membership register, books of account and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any Owner or by his duly appointed representative and by holders, insurers or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a member or holder, insurer or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

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

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

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

12.12. Financial Statements. Financial statements for the Association shall be compiled annually in the manner as the Board may decide. After having received the Board's financial statements at the annual meeting, the Owners, by a Majority of the Total Association Vote, may require that the financial statements of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all costs associated therewith, such holder shall be entitled

to receive a copy of the audited financial statements of the Association within 90 days of the date of the request.

12.13. Notice of Sale. If an Owner sells or leases his or her Lot, the Owner shall, within 10 days after the sale of a Lot, give to the Association, in writing, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Owners must also notify the Association of leases as specified in Section 6.30.

12.14. Agreements. All agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board 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. During the Declarant Control Period, all such agreements and determinations are subject to the approval of the Declarant.

12.15. Variances. Notwithstanding anything to the contrary contained herein, the Board shall be authorized to grant individual variances from any of the provisions of the Governing Documents if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

12.16. Litigation.

(a) No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least 75% of the Total Association Vote and, during the Declarant Control Period, by Declarant. This Section shall not apply, however, to:

- (i) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens);
- (ii) the imposition and collection of assessments as provided in Article 4;
- (iii) proceedings involving challenges to ad valorem taxation;
- (iv) counterclaims brought by the Association in proceedings instituted against it; or
- (v) 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.

(b) This Section shall not be amended unless such amendment is made by the Declarant pursuant to Section 12.4, or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

12.17. Implied Rights. The Association may exercise any right or privilege given to it expressly by Governing Documents, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

12.18. Security. The Declarant and the Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community and the Lots safer than they otherwise might be. HOWEVER, THE ASSOCIATION, THE DECLARANT, ITS PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, AND THE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF THE FOREGOING, SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY, NOR SHALL ANY OF THE FOREGOING BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, THE DECLARANT, ITS PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, AND THE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF THE FOREGOING, ARE NOT INSURERS AND THAT EACH PERSON USING THE COMMUNITY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO PROPERTY, TO LOTS, AND TO THE CONTENTS OF LOTS AND THE STRUCTURES THEREON RESULTING FROM ACTS OF THIRD PARTIES. THE RESPONSIBILITY FOR SECURITY LIES SOLELY WITH THE OWNER OF A LOT IN THE COMMUNITY.

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

12.21. Declarant Rights. The original Declarant may assign its rights, duties and privileges as "Declarant" to another party. Any successor Declarant must be the purchaser (for the purpose of development or sale) of all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A", attached hereto, or in Exhibit "B", attached hereto. In the instrument of conveyance to any such successor or in a separate recorded document, the prior Declarant must designate the successor party as the "Declarant" hereunder. Upon designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease. As to all of the property described in Exhibit "A", attached hereto, and in Exhibit "B", attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one Person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time.

IN WITNESS WHEREOF, the Declarant, has caused this Declaration to be executed under seal as of Aug 26, 2014.

DECLARANT:

JW HOMES, LLC,
a Delaware limited liability company

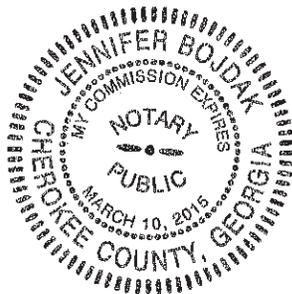
By: [Signature] (SEAL)
Name: Tom S. Reed
Title: Jr. Vice President

Signed, sealed, and delivered
in the presence of:

[Signature]
WITNESS Andrew McBride

[Signature]
NOTARY PUBLIC

My Commission Expires:



CONSENT OF LENDER

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent (collectively with its successors or assigns, "Lender"), for its benefit and the benefit of the Lender Parties, as defined in that certain Credit Agreement dated as of January 28, 2014 by and among JW Homes, LLC ("Borrower"), Lender, and the financial institutions party thereto and their assignees under Section 13.6 therein, is the holder of that certain Deed to Secure Debt with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (hereinafter, the "Security Deed") encumbering all or a portion of the property described in this document.

Lender hereby consents to the execution and recording of the Declaration of Protective Covenants for Mill Creek Preserve, and to the plat or plats creating the Lots that constitute the Community (the "Plats"), and agrees that any foreclosure of the security title and interest under the Security Deed or any other instrument evidencing or securing Lender's interest shall be subject and subordinate to this document and the Plats and any amendments thereto as it affects the Property.

Effective as of August 28, 2014.

LENDER:
WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent

By: [Signature]
Name: Billy C. Olson
Title: Vice President

Signed, sealed, and delivered
in the presence of:

[Signature]
WITNESS

[Signature]
NOTARY PUBLIC

My Commission Expires: _____

[NOTARY SEAL]

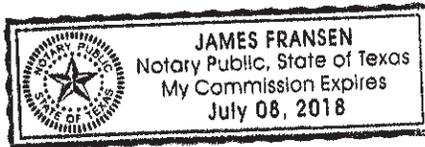


EXHIBIT "A"

Property Subject to Declaration

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 816 of the 16th District, 2nd Section of Cobb County, Georgia, containing approximately 23.44 acres as shown on that certain Final Subdivision Plat of Mill Creek Preserve, dated October 7, 2013 last revised, prepared by Southeastern Engineering, Inc., certified by Chris Amos Adams, Georgia Registered Land Surveyor No. 2796, which plat was recorded on June 10, 2014 in Plat Book 273 Page 872, Cobb County, Georgia land records.

EXHIBIT "B"

Additional Property which can be Unilaterally
Subjected to Declaration by Declarant

Any land located within a 3 miles radius of the northeast corner of the intersection of Holly Springs Road and Tabor Drive, Cobb County, Georgia (which is located on the property described on Exhibit "A" hereto).

EXHIBIT "C"

Bylaws of Mill Creek Preserve Neighborhood Association, Inc.

BYLAWS

OF

MILL CREEK PRESERVE NEIGHBORHOOD ASSOCIATION, INC.

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BYLAWS
OF
MILL CREEK PRESERVE NEIGHBORHOOD ASSOCIATION, INC.

Article 1
Name, Membership and Definitions

1.1. Name. The name of the Association shall be Mill Creek Preserve Neighborhood Association, Inc. (the "Association").

1.2. Membership. The Association shall have one class of membership, as is more fully set forth in the Declaration of Protective Covenants for Mill Creek Preserve (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.

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. First Meeting and Annual Meetings. An annual or special meeting shall be held within one year from the date the Declaration is recorded. Annual meetings shall be set by the Board so as to occur no later than 60 days after the close of the Association's fiscal year or at such other date and time as the Board of Directors may decide in its sole discretion. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday (excluding Saturday and Sunday).

2.3. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a Majority of the Board of Directors or upon a petition signed by at least 25% of the Total Association Vote (the separate consent of Declarant shall not be required). The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

2.4. Notice of Meetings. It shall be the duty of the Secretary of the Association to mail or to cause to be delivered to the Owner of record of each Lot a notice of each annual or special meeting of the Association stating the time and place where it is to be held and, for a

special meeting, the purpose thereof. If an Owner wishes notice to be given at an address other than his or her Lot, he or she shall have designated by notice in writing to the Secretary of the Association such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than 10 nor more than 30 days before the date of a meeting.

2.5. 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, 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 a waiver by such member of notice of the time, date and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

2.6. Adjournment of Meetings. If any meetings 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 5 nor more than 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.

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

2.8. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary of the Association before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his or her Lot, or upon receipt of notice by the Secretary of the Association of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of 11 months from the date of the proxy.

2.9. Quorum. The presence, in person or by proxy, of 10% of the total eligible Association vote 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.

2.10. Action by Written Consent. Any action to be taken at a meeting of the members, or any action that may be taken at a meeting of the members, may be taken without a meeting if one or more consents, in writing, setting forth the action so taken shall be signed by members holding the voting power required to pass such action at a meeting held on the date that the last consent is executed and such action is consented to by Declarant (if required during the Declarant Control Period). Such action shall be effective upon receipt by the Association of a sufficient number of such consents executed by current members unless a later effective date is specified therein. Such action shall be approved when the Secretary receives a sufficient number of such consents dated within 70 days of the record date for such action. If less than unanimous

consent is obtained, the approval shall be effective 10 days after the Secretary gives written notice of the approval to all members who did not sign a consent. Each consent in writing or by electronic transmission shall be included in the minutes of meetings of members filed in the permanent records of the Association. No consent in writing or by electronic transmission 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.

2.11. Action by Written Ballot. Any action to 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, except in the case of the election of directors, provide an opportunity to vote for or against each proposed action. 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, except in the case of the election of directors, 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. All solicitations for votes by written ballot shall: (a) indicate the number of responses needed to meet the quorum requirements; (b) state the percentage of approvals necessary to approve each matter (other than election of directors); and (c) 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 without the consent of the Board of Directors. The results of each action by written ballot shall be certified by the Secretary of the Association 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

A. Composition and Selection.

3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 3.2, the directors must reside in the Community and shall be members or spouses of such members; provided, however, no Person and his or her spouse may serve on the Board at the same time.

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 the expiration or earlier termination of the Declarant Control Period. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association as provided herein. The directors appointed by the Declarant need not be Owners or residents in the Community.

3.3. Number of Directors. During the period in which the Declarant has the right to appoint and remove the officers and directors of the Association, the Board of Directors shall consist of 1 to 5 members, determined by the Declarant from time to time in writing in its sole discretion. After the right of the Declarant to appoint and remove the directors and officers of the Association expires as provided in Section 3.2 above, the Board of Directors shall consist of 3 members who shall be elected as provided below.

3.4. Nomination of Directors. Elected directors may be nominated from the floor and may also be nominated by a nominating or elections committee, if such a committee is 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. Owner-elected directors shall be elected and hold office as follows:

(a) After Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting to be held at which Owners shall elect directors.

(b) At annual meetings of the membership thereafter (or by written consent or written ballot in lieu of a meeting as provided in Sections 2.10 and 2.11 hereof), directors shall be elected. All eligible members of the Association shall vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected; provided, however, the initially elected directors shall serve the remainder of their terms.

(c) The directors shall be elected at-large by all of the Owners in the Community.

(d) It is intended that the elected directors serve staggered terms. Accordingly the initial term of one director shall be fixed at one year, the initial term of one director shall be fixed at 2 years, and the initial term of one director shall be fixed at 3 years. At the expiration of the initial term of office of each respective member of the Board of Directors, a successor shall be elected to serve for a term of 2 years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

3.6. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the members of the Board of Directors 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. A director whose removal has been proposed by the Owners shall be given at least 10 days' notice of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who has 3 consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment for more than 20 days may be removed by a Majority vote of the directors at a meeting, a quorum being present. This Section shall not apply to directors appointed by 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, even though less than a quorum, at any meeting of the Board of Directors. Each Person so selected shall serve the unexpired portion of the term.

B. Meetings.

3.8. Organizational Meetings. The first meeting of the members of the Board of Directors elected by Owners shall be held within 10 days following each annual meeting of the membership at such time and place as shall be fixed by the Board.

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 a Majority of the directors. After the Board of Directors is elected by Owners, at least 4 such meetings shall be held during each fiscal year with at least one per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

3.10. Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President or by any two directors. The notice shall specify the 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; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a Person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director; (d) by email; or (e) by commercial delivery service to such director's home or office. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least 4 days before the time set for the meeting. Notices given by personal delivery, telephone, or electronically, either by confirmed email or facsimile, shall be given at least 48 hours before the time set for the meeting.

3.11. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. 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. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting cannot be held because a quorum is not present, a Majority of the directors who are present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time that 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.

3.13. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by a Majority of the Total Association Vote. However, any director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

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 to be taken at a meeting of the directors, or any action that may be taken at a meeting of the directors, may be taken without a meeting if a consent, in writing, setting forth the action so taken shall be signed by a Majority of the directors and delivered to the Association for filing in the permanent records of the Association.

3.17. Telephonic Participation. One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all directors participating in the meeting can hear each other at the same time, and those directors so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board.

C. Powers and Duties.

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 directed to be done and exercised exclusively by the members under the terms of the Declaration, the Articles of Incorporation of the Association, or these Bylaws. 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 Owner to the common expenses;

(b) making assessments to defray the common expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the 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 use restrictions and 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 adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- (i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- (j) paying the cost of all services rendered to the Association or its members which are not directly chargeable to Owners;
- (k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred;
- (l) contracting with any Person for the performance of various duties and functions;
and
- (m) any and all other duties and responsibilities identified in the Declaration.

The Board shall have the power to enter into common management agreements with trusts, condominiums or other associations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

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 year and shall be subject to termination by either party, without cause and without penalty, upon 90 days' written notice.

3.20. Fining Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(a) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:

- (i) the alleged violation;
- (ii) the action required to abate the violation;

(iii) a time period, not less than 10 days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of a fine, if the violation is not continuing. The Board or its designee may demand immediate abatement in such circumstances which, in the Board's determination, pose a danger to safety or property; and

(b) Notice. If the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board may, upon notice stating the nature of the violation, impose a fine within 12 months of such demand. Such fine(s) may be effective upon sending the notice outlined in this subsection (b) hereof. Such notice shall state a time period, not less than 10 days, during which the violator may request, in writing, a hearing regarding the proposed fine and violation. All rights to have the fine reconsidered are waived if a hearing is not requested within 10 days from the date of the notice. The violator may produce any statements, evidence, and witnesses at the hearing. 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.

Article 4 **Officers**

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

4.2. Election, Term of Office and Vacancies. Except during the period in which Declarant has the right to appoint the officers of the Association under Section 3.2 of these Bylaws, the officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the members. 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. **Removal.** Any officer may be removed by the Board of Directors whenever, in its judgment, the best interests of the Association will be served thereby.

4.4. **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code.

4.5. **Vice President.** If a Vice President is elected, the Vice President shall act in the President's absence and shall have all powers, duties and responsibilities provided for the President when so acting.

4.6. **Secretary.** The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with Georgia law.

4.7. **Treasurer.** The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. If no Vice President has been elected, the Treasurer shall act in the President's absence and shall have all powers, duties and responsibilities provided for the President when so acting.

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

Article 5 **Committees**

Committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Article 6 **Miscellaneous**

6.1. **Fiscal Year.** The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

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, these Bylaws, or a ruling made by the Person presiding over the proceeding.

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. Amendment. The provisions of the Declaration applicable to amendment of that instrument shall apply to any amendment of these Bylaws.

6.5. 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.