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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,

RESTRICTIONS AND EASEMENTS

FOR

THE VILLAS AT AVIGNON AT VININGS

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION, BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS ASSOCIATION ACT, O.C.G.A. § 44-3-220, *ET SEQ.*, OR THE PROVISIONS OF THE GEORGIA CONDOMINIUM ACT, O.C.G.A. § 44-3-70, *ET SEQ.*

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

THE VILLAS AT AVIGNON AT VININGS

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<u>Exhibit “A”</u>	–	Property Description
<u>Exhibit “B”</u>	–	Additional Property Which May be Unilaterally Submitted to This Declaration by Declarant
<u>Exhibit “C”</u>	–	Bylaws of The Villas at Avignon at Vinings Community Association, Inc.

**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
THE VILLAS AT AVIGNON AT VININGS**

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

WITNESSETH

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

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereof to the provisions of this Declaration to provide for a general plan for the subdivision, development and improvement of the Community in an orderly manner with appropriate architectural, landscaping, construction, development and maintenance controls to maintain the value, aesthetic appearance and architectural harmony of the Community during and after development; and to provide for the subjecting of other real property to the provisions of this Declaration;

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

**Article 1.
Definitions**

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

1.1. "Articles of Incorporation" means the Articles of Incorporation of The Villas at Avignon at Vining Community Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.2. “Association” means The Villas at Avignon at Vinings Community Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

1.3. “Board of Directors” or “Board” means the appointed or elected body of the Association, vested with the authority to manage the affairs of the Association under the Georgia Nonprofit Corporation Code, O.C.G.A. § 14-3101, *et seq.*

1.4. “Bylaws” means the Bylaws of The Villas at Avignon at Vinings Community Association, Inc., attached to this Declaration as Exhibit “C” and incorporated herein by this reference, as may be amended from time to time.

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

1.6. “Community” refers to that certain real property described in Exhibit “A” attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein; including, without limitation, that property designated as “The Villas at Avignon at Vinings.”

1.7. “Community-Wide Standard” means the standard of conduct, maintenance or other activity generally prevailing in the Community and in the overall Avignon at Vinings residential development. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

1.8. “Declarant” means **AVIGNON, LLC**, a Georgia limited liability company, and its successors-in-title and assigns; provided that in a recorded instrument, such successor-in-title or assignee is designated as the Declarant hereunder by the holder of all of the rights of Declarant hereunder.

1.9. “Lot” means any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes a single-family dwelling site, which dwellings will not be attached by one or more party walls to another dwelling, as shown on a plat recorded in the Office of the Clerk of the Superior Court of Cobb County, Georgia. The ownership of each Lot shall include, and there shall automatically pass with the title to each Lot as an appurtenance thereto, membership in the Association and all rights and interest of an Owner in the Common Property.

1.10. “Master Owners’ Association” means the Avignon at Vinings Owners Association, Inc., a Georgia nonprofit corporation, established pursuant to the Master Declaration, to be the entity named as having the power and authority set forth therein.

1.11. “Master Bylaws” means the Bylaws of the Master Owners’ Association as may be amended from time to time.

1.12. “Master Declarant” means the declarant under the Master Declaration, as that term is defined therein, being Avignon, LLC, and its successors-in-title and assigns.

1.13. “Master Declaration” means that certain Master Declaration of Protective Covenants, Conditions, Restrictions, and Easements for Avignon at Vinings, recorded on _____, 2007, at Deed Book _____, Page _____, Cobb County, Georgia Records, as may be supplemented and amended from time to time, which document subjects the real property described in Exhibit “A” thereto and any additional property annexed thereto to the provisions of that Master Declaration, which property shall be held, sold, transferred, conveyed, used, occupied and encumbered, subject to the covenants, conditions, restrictions and easements therein set forth.

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

1.15. “Mortgagee” means the holder of a Mortgage.

1.16. “Occupant” means 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.

1.17. “Owner” means the record owner, whether one or more Persons, of the fee simple title to any Lot within the Community, but does not include any Mortgagee.

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

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

1.20. “Total Association Vote” means the votes attributable to the entire membership of the Association as of the record date for such action (including votes of the Declarant), 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, a majority of the Total Association Vote is required to approve a matter, such matter must receive more than half of the votes attributable to all existing members of the Association as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. As a further illustration, if a majority vote is required to approve a matter (and the term “Total Association Vote” is not used), such matter must receive more than half of the votes cast by the members present and entitled to vote on the matter.

1.21. “Voting Delegate” means the individual selected by the Board of Directors of the Association to cast all votes attributable to the Lots in the Community as more particularly described in the Master Declaration. Unless otherwise specified by the Board of Directors of the Association, the Voting Delegate shall be the president of the Association, and the alternate Voting Delegate shall be the treasurer and secretary, in that order.

Article 2.
Property Subject to This Declaration

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

2.2. **Unilateral Annexation by Declarant.** As the owner thereof, or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time, at any time, until ten (10) years after the recording of this Declaration, to subject all or any portion of the real property described **Exhibit "B"** attached hereto and by this reference incorporated herein, to the provisions of this Declaration and the jurisdiction of the Association, by filing for record in the Office of the Clerk of Superior Court of Cobb County, Georgia, a Supplementary Declaration describing the property being subjected. Any annexation shall be effective upon the filing for record of a Supplementary Declaration executed by the Declarant unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed, and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land, nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

2.3. **Additional Covenants, Restrictions and Easements.** The Declaration 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, declaration of condominium, 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, declaration of condominium, 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 Declaration, By-Laws or Articles.

2.4. **Other Annexation.** Upon the written consent of (a) the owner(s) thereof; (b) the Declarant; and (c) the Owners of at least two-thirds (2/3) of the Lots, the Association may annex real property to the provisions of this Declaration, and the jurisdiction of the Association, by filing for record in the Office of the Clerk of Superior Court of Cobb County, Georgia, a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association, whose signature shall be attested by the

Secretary of the Association. The annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

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

Article 3. **Association Membership and Voting Rights**

3.1. Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Mortgagees, and the conveyance of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the designee of a member, but in no event shall more than one office be held for each Lot owned. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this Section shall restrict the number of votes cast or the number of the officers and directors appointed by the Declarant.

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

3.3. Voting – Master Declaration. For purposes of effecting ways and means of smooth and efficient communication between the Master Association and Owners of Lots in the Community, the Master Association shall be entitled to communicate and deal with the Association in all matters affecting the Owners of such Lots; and the Voting Delegate(s) of the Association shall be deemed the Voting Delegate(s) of the Community, entitled to cast all votes attributable to the Community pursuant to the Master Declaration, unless otherwise provided by the Board of Directors of the Association. Unless otherwise required or provided in the Master Declaration, each Owner shall be represented at any meeting of the Members of the Master Association by the Voting Delegate or other designated representative of the Association, who shall be entitled to cast all votes attributable to the Community pursuant to the Master Declaration.

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

Article 4. **Assessments**

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

4.2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a 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 (a) general assessments; (b) special assessments; (c) specific assessments; and (d) Master Declaration Assessments. All such assessments, together with late charges, interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18.0%) per annum on the principal amount due), and costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land, and shall be a continuing lien in favor of the Association on the Lot against which each assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien, and no further recordation of any claim of lien shall be required. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the 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; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration but not limitation, abandonment of the property. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of such Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

4.3. General Assessments. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. The general assessment to be levied against each Lot shall be an equal amount for all Lots. The Board shall cause the budget and the assessments to be levied for the year to be delivered to each member at least thirty (30) days prior to the due date of any general assessment. The budget and the general assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and the Declarant. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue. Notwithstanding anything to the contrary herein, the part of the Association budget attributable to

Master Declaration Assessments may be disapproved only as provided for in the Master Declaration, so that any increase in proposed budget and the assessments levied by the Association due to an increase in the Master Declaration Assessments shall automatically go into effect. General assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice, for delinquents. Unless otherwise provided by the Board, the general assessment shall be paid in one annual installment. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment, and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance, the Master Declaration Assessment, and expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors, and in connection with the enforcement of rights and duties of the Association against Owners and others.

4.4. Special Assessments. The Association may levy a special assessment if approved by two-thirds (2/3) of the Total Association Vote and the Declarant. Special assessments shall be paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.5. Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association, and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; and (b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

4.6. Master Declaration Assessment. The Master Declaration Assessment shall be allocated among all Lots as provided in the Master Declaration. Notwithstanding the above, the Master Declaration Assessment shall be a line item in the Association budget, and shall be paid to the Master Owners' Association. This assessment obligation shall be enforceable by the Master Owners' Association against the Association or individual Lot Owners, as the case may be, as provided in the Master Declaration. The Association shall pay to the Master Owners' Association its share of the Master Declaration Assessment as provided in the Master Declaration.

4.7. Subordination of Liens to Mortgages. The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage if, but only if, all assessments and charges with respect to such Lot authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record, and prior to the satisfaction, cancellation or foreclosure of such Mortgage, or the sale or transfer of the property pursuant to any proceeding in lieu of foreclosure, or the sale or transfer of the property

pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination, and shall not relieve an Owner of the personal obligation to pay all assessments coming due during such period of ownership; shall not relieve such property from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such property to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure, or pursuant to a sale under power, shall relieve any existing or previous Owner of any personal obligation, or relieve such property or the then Owner from liability for any assessment authorized hereunder becoming due after such sale and transfer.

4.8. Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation, and shall also pass to such Owner's successors-in-title. Each Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto; notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a notice of its claim of lien with the Office of the Clerk of Superior Court of Cobb County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments contained in this Declaration. Each Owner, by acceptance of a deed, vests in the Association the right and power to bring all actions against such Owner personally for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association, and shall be for the benefit of all Owners. The Association shall have the power to bid on any property within the Community at any foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property maintained by the Association, and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension, and shall not affect the permanent lien on such property in favor of the Association.

4.9. Date of Commencement of Assessments. Assessments shall commence in general when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a particular Lot on the date that the Lot is first occupied, or is conveyed by Declarant to an owner who is not a successor Declarant, or a builder acquiring the Lot for resale during the ordinary course of business. A Lot shall be occupied when it has been improved with a structure and has been conveyed to an Owner who intends to occupy and use the structure as a residence, or, if the structure is occupied as a residence before such conveyance, the date of such occupancy.

4.10. Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expanses of the Association (but specifically not including an allocation for capital reserves), and the sum of the general, special, and specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Community. No Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

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

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

4.13. Initiation Fee. Upon each and every sale of a Lot after it has been improved with a structure for which a certificate of occupancy has been issued, an initiation fee in the amount of one-sixth (1/6) of the annual general assessment in effect at the time shall be collected from the purchaser at the closing of such transaction, and paid to the Association; or, if not collected at closing, immediately upon demand by the Association. The initiation fee shall constitute a specific assessment against the Lot, shall be in addition to, not in lieu of, the annual general assessment, and shall not be considered an advance payment of such assessment. The initiation fee may be used by the Association for any purpose, including, without limitation, for the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions of this Declaration. This specific assessment shall not apply to 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 shall apply to the Owner acquiring the Lot from the foreclosing Mortgagee.

Article 5.

Maintenance; Common Property

5.1. Association's Responsibility. The Association shall maintain and keep the Common Property in good repair. The Association shall also maintain (whether or not constituting Common Property) (a) all Community entry features, including entry area landscaping and any irrigation system, and the expenses for water and electricity, if any, provided to all such entry features, to the extent not otherwise maintained by the Master Association pursuant to the Master Declaration; (b) all storm water detention/retention ponds and storm water drainage facilities serving the Community, if and to the extent such facilities are not maintained by the owner of such facilities, the owners of nearby property served by such facilities, a government body, or the Master Association pursuant to the Master Declaration; (c) all Community greenbelt and open spaces, and any irrigation system and the expenses

for water and electricity, if any, provided to all such greenbelt and open spaces, to the extent the same are not otherwise maintained by the Master Association pursuant to the Master Declaration; (d) private streets and alleys in the Community, to the extent the same are not otherwise maintained by the Master Association pursuant to the Master Declaration; and (e) landscaping and lawn maintenance on a Lot, and any irrigation system and the expenses for water, if any, provided to all such landscaping and lawn maintenance as provided in Section 5.3 hereof. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community, and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement, and all costs thereof not paid for by insurance shall be assessed against the Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Community-Wide Standard. Any common irrigation system installed by the Declarant or the Association shall be Common Property, operated, maintained, repaired and replaced by the Association. The deed of conveyance of any Lot shall not include any right, title or interest in such irrigation system, if any.

5.2. Owner's Responsibility. Except for maintenance performed on a Lot by the Association pursuant to Section 5.1, Section 5.3, or Article 9, if any, all maintenance of the Lot and all structures, landscaping, and other improvements thereon 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. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; keeping improvements and exterior lighting in good repair and working order; keeping driveways and walkways in good repair; complying with all governmental health and police requirements; and repair of exterior damage to improvements including, without limitation, repairing and painting (or other appropriate external care) of improvements located on a Lot. In addition, Owners shall maintain any pipe(s), wire(s) and conduit(s) which serve only the Lot, whether said pipe(s), wire(s) or conduit(s) are located within or outside of a Lot's boundaries. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work, which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement, and all costs thereof shall be assessed against the Owner and the Lot as a specific assessment.

5.3. Landscaping and Lawn Maintenance. As provided in Section 5.1 above, the Association shall maintain and keep in good repair the lawn and landscaping improvements located on the exterior portions of the Community, including, but not limited to, landscaping and lawn maintenance of a Lot. The Board of Directors, in its sole discretion, may leave portions of the Community as undisturbed natural areas, and may change the landscaping in the Community at any time and from time to time, or may, with the consent of the Declarant, change the level of lawn maintenance performed or,

for example, maintain front yards only. Any common irrigation system or common well serving the Community installed by the Declarant or the Association shall be Common Property, operated, maintained, repaired and replaced by the Association. The deed of conveyance of any Lot shall not include any right, title or interest in such irrigation system or common well serving the Community, if any. The Board of Directors may promulgate rules setting forth the extent of landscaping maintenance to be performed by the Association, and rights of Owners with respect to adding or modifying landscaping improvements, including, for example, allowing seasonal flowering plants in certain areas of the Community at the expense of the Owner. Landscaping improvements installed by the Owner in accordance with the provisions of this Declaration shall be maintained by the Owner in a manner consistent with the Community-Wide Standard. Any landscaping improvements originally installed by an Owner which are not properly maintained, including but not limited to, damaged, diseased or dead plants, shrubs and trees, may, at the sole discretion of the Board of Directors, be removed from the Community. The costs associated with removing any damaged, diseased or dead plants, shrubs and trees originally installed by an Owner in the Community, may be assessed against the Owner and the Lot as a specific assessment. All maintenance, repair and replacement of all landscaping and improvements contained in any courtyard area which may only be accessed from one Lot shall be the responsibility of the Owner of the Lot who benefits from the courtyard area. In addition, in the event that the Owner of a Lot obtains approval to construct a fence in accordance with Section 7.15 hereof, the Association shall no longer be obligated to maintain landscaping on the enclosed portions of the Lot, and such landscaping and lawn maintenance shall be the sole responsibility of the Owner. To the extent that a fence constructed pursuant to this Declaration constitutes a party wall, maintenance for that fence or other improvement shall be allocated as provided in Section 5.6 herein.

5.4. Conveyance of Common Property by Declarant to Association; No Implied Rights.

Declarant may transfer or convey to the Association, at any time and from time to time, any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property, to be used and maintained by the Association for the benefit of its members. So long as Declarant owns any property primarily for development and/or sale in the Community, or Declarant has the right unilaterally to annex additional property to the Declaration, Declarant may, upon written notice to the Association, require the reconveyance by the Association to Declarant of any Common Property or any portion thereof, improved or unimproved, at no charge to Declarant, without a vote of the Owners/members of the Association, if the Common Property or portion thereof 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 by Declarant due to changes in the overall scheme of development for the Community. The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept on behalf of the Association any such conveyance to the Association, and to execute on behalf of the Association any and all documents, including, without limitation, deeds and transfer tax declaration forms, necessary or convenient to effectuate and document any such conveyance to the Association. The power and agency hereby granted are coupled with an interest, and are irrevocable by death or otherwise. The Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section, and shall have no duty or obligation to convey any property or property rights to the Association, regardless of whether or not any such property has been made available for the use of Owners. The Declarant may reserve, by lease, license, easement, or otherwise, such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant may reasonably require, so long as such reservation is not materially inconsistent with the overall scheme of development for the

Community. Neither the recordation of any subdivision plat, nor the use by the Owners or maintenance by the Association of any property, shall create any rights, easements or licenses in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the Office of the Clerk of Superior Court of Cobb County, Georgia.

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

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

5.7. Liability. Owners, Occupants and their guests shall use the Common Property, Community recreational facilities, green space, private streets and alleys, pedestrian paths, and walking trails maintained by the Association at their own risk, and shall assume sole responsibility for their personal belongings used or stored there. The Association, the Declarant, and their respective officers, directors, employees, representatives, and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on any of the foregoing property. The Association shall not be liable for injury or damage to any Person or property (a) caused by the elements or by an Owner or any other Person; (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association; or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or Occupant for loss or damage, by theft or otherwise, of any property of such Owner or Occupant.

5.8. Garbage Pick-Up. 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. Trash and recycling receptacles shall be placed at the curb no earlier than 5:00 p.m. the day before pick up, and shall be removed within twenty-four (24) hours. Trash pick-up shall also be subject to such reasonable rules and regulations as the Board of Directors may adopt. All charges for usual and customary trash collection may be assessed to each Lot equally as part of the general assessment in accordance with Section 4.3 hereof. If a Lot Owner, for any reason, refuses trash collection service provided by the Association, such Owner shall nevertheless still be obligated to pay the full general assessment.

Article 6.
Architectural Standards

6.1. General. No exterior construction, alteration, or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling, construction of impervious surface, building, exterior alteration of existing improvements, change in the exterior color of any existing improvement, and planting and removal of landscaping materials), shall be commenced or placed upon any part of the Community unless installed by the Declarant or an affiliate of the Declarant, approved in accordance with this Article, or otherwise expressly permitted under this Declaration. Any Owner may remodel, paint or redecorate the interior of structures on the Lot without approval hereunder. However, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of the Declarant, affiliates of the Declarant, nor to improvements to the Common Property by or on behalf of the Association. This Article may not be amended without the written consent of the Declarant until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Lot has been improved with a structure for which a certificate of occupancy has been issued.

6.2. Guidelines and Procedures. Except as provided above, no exterior construction, addition, or alteration shall be made unless and until plans and specifications shall have been submitted in writing to and approved by the Declarant. Such plans and specifications shall be of sufficient detail to allow the Declarant to make its review and, to the extent required by the Declarant, shall show the nature, kind, shape, height, materials and location of the proposed improvement. The Declarant may adopt written design and development guidelines, and application and review procedures, which may provide for a review fee. The Declarant shall have sole and full authority to prepare and to amend, from time to time, at its sole discretion and without notice, the architectural guidelines. The Declarant shall make the architectural guidelines available to Owners and builders who seek to engage in construction upon all or any portion of the Community, and such Owners and builders shall conduct their operations strictly in accordance therewith. If the Declarant fails to approve or to disapprove submitted plans and specifications within thirty (30) days after receipt of all required plans and specifications, such approval shall be deemed to have been given. As a condition of approval under this Article, each Owner, on behalf of each Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration. In the discretion of the Declarant, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged by such Owner, on behalf of such Owner and such Owner's successors-in-interest. The Declarant shall be the sole arbiter of such plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. The Declarant and its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such entry. If construction does not commence on a project for which plans have been approved within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the Declarant for reconsideration.

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

6.4. No Waiver. The approval of the Declarant of any proposals, or plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval or consent of the Declarant, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, or drawings, or matters whatever, subsequently or additionally submitted for approval or consent.

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

6.6. Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant, an Owner shall, at its own cost and expense, remove such nonconforming structure or improvement, and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Lot as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the architectural guidelines may be excluded by the Declarant from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws. In such event, neither the Declarant, the Association, or the officers, directors, members, employees and agents of any of them, shall be held liable to any Person for exercising the rights granted by this paragraph. In addition to any other remedies available to the Declarant, in the event of noncompliance with this Article, the Declarant may record in the appropriate land records a notice of violation hereunder, naming the violating Owner. In

addition to the foregoing, the Declarant shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

6.7. Architectural Review Committee. Until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Lot has been improved with a structure for which a certificate of occupancy has been issued, the Declarant shall have the sole right, power, and authority under this Article. There shall be no surrender of this right except in a written instrument in recordable form executed by Declarant and recorded in the Office of the Clerk of Superior Court of Cobb County, Georgia. Upon expiration or earlier surrender in writing of all or a portion of such right and authority, the Board of Directors shall appoint an Architectural Review Committee of the Association ("ARC"), which shall then have such jurisdiction over architectural control under this Article as may have been relinquished by the Declarant. The Declarant may, in its sole discretion, relinquish architectural control as to certain types of improvements or modifications while retaining control over all other building and construction in the Community. For example and without limitation, the Declarant may relinquish control over modifications of existing structures to the ARC while retaining all authority to review and approve new home construction. Any right, power, or authority of the Declarant which may be relinquished prior to the termination of the rights of Declarant hereunder shall be by written, recorded instrument only, and no such right, power or authority shall be relinquished by implication or otherwise. The establishment of an advisory ARC shall not be deemed to be a relinquishment by Declarant of any of its right, power and authority hereunder. After the termination of all rights of Declarant hereunder, the ARC shall have all right, power and authority to review and approve building and construction activity within the Community hereunder, and this Article shall then be read and interpreted as if any reference to the Declarant in this Article 6 were a reference to the ARC.

Article 7. Use Restrictions and Rules

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

7.2. Residential Use. Each Lot shall be used for single-family residential purposes exclusively. Leasing of a Lot for single-family residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant in residence at the Lot may conduct business activities within the dwelling unit, so long as the business activity (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premium paid by the Association, or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the single-family residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Community, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation,

work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family, and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity.

7.3. Signs. No sign of any kind shall be erected within the Community without the prior written consent of: (a) the Declarant or, after the termination of the rights of Declarant hereunder, the Board of Directors; and (b) the Architectural Review Committee, if any. Notwithstanding the foregoing, the Board or the Declarant shall have the right to erect reasonable and appropriate signs. For-sale signs and security signs not larger than 18-inches by 18-inches and any signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Mortgagee in possession due to foreclosure of a first Mortgage, or as grantee pursuant to any deed in lieu of such foreclosure. The Board may impose a fine of One Hundred Fifty and No/100 Dollars (\$150.00) per day for display of any sign in violation of this provision which is not removed within twenty-four (24) hours after written demand is delivered to the Owner at that Lot.

7.4. Vehicles Parking. Vehicles shall be parked only in appropriate parking spaces serving the Lot or other designated areas, if any. No on-street parking, other than in connection with special events as approved by the Board of Directors, shall be permitted within the Community. All parking shall be subject to such rules and regulations as the Board may adopt. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking spaces serving a Lot" shall refer to the number of garage parking spaces and the spaces located in the driveway of each Lot. The term "commercial vehicles," as used herein, shall include, without limitation, any vehicle which bears the indicia of commercial use, including but not limited to writing, logos, ladders, or which would not be primarily used for the transportation of passengers. Commercial vehicles shall not be permitted on any Common Property or on any Lot, except if kept in an enclosed garage; provided, however, construction, service, and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service, or to make a delivery to a Lot or the Common Property. All homes shall contain a garage; carports shall not be permitted. Garages shall be used for parking of vehicles and shall not be used primarily for storage or other purposes. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than three (3) days if it is not licensed, or if it is in a condition such that it is incapable of being operated upon the public highways. After such three-day period, such vehicle may be removed from the Community by the Board of Directors. Any towed vehicle, boat, personal water craft, recreational vehicle, motor home, trailer, motorcycle, mini-bike, scooter, go-cart, golf cart, commercial vehicle, camper, bus or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage, for periods longer than twenty-four (24) hours, may be removed from the Community by the Board of Directors (the intent of this provision is that the aforementioned vehicles may not be stored on a Lot except if kept in a garage, and the temporary removal of such vehicle from a Lot to break the continuity of the twenty-four (24) consecutive hours shall not be sufficient to establish compliance with this restriction). Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation, and the camper is stored out of public view upon removal. No eighteen wheel trucks, or the cabs of such trucks, or trucks with a load capacity in excess of three-quarters of a ton, shall be parked, kept or stored within the Community except during the time reasonably necessary to provide service or delivery within the Community. As long as rights of

existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to modify the provisions of this Section.

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

If a vehicle is parked in a fire lane, is blocking another vehicle, is obstructing the flow of traffic on any private street or alley, or is parked on any landscaped or grassy area, or otherwise creates a hazardous condition, no notice shall be required; and the Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

7.5. Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on the exterior of any Lot, with the exception of dogs, cats, or other usual and common household pets. All pets shall be registered, licensed and inoculated if and as required by law. No pets shall be kept, bred or maintained for any commercial purposes. No exterior pens for household pets shall be erected or maintained on any Lot, unless approved in accordance with the provisions of Article 6 hereof. Dogs shall, at all times when outside the Lot, be kept on a leash or otherwise under control at all times. Animal control authorities shall be permitted to enter the Community to patrol and remove unlicensed pets. An Owner shall not allow any animal waste to remain on the Common Property maintained by the Association. The Association may require the removal of 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.

7.6. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on a Lot. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition, or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No plants, animals, device, or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, screaming, shouting, excessively loud talking, fighting, raucous behavior, insobriety, playing loud music or television, use of any alarm, equipment, or device, mechanical or otherwise, which creates or produces excessively loud sounds or any vibrations, or any conduct which creates any noxious or offensive odors outside a home, shall be permitted, located, used or placed on any Lot, or any portion thereof. The

inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person, as determined in a particular instance by the Board.

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

7.8. Antennas. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Lot, unless approved in accordance with the provisions of Article 6 hereof; provided, however, no such approval shall be necessary to install (1) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services, that are one meter or less in diameter; (2) antennas designed to receive video programming services via multi-point distribution services that are one meter or less in diameter or diagonal measurement; or (3) antennas that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the structure unless an acceptable quality signal cannot otherwise be obtained. However, the Board, the Declarant (and its affiliates), and the Master Association 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, including, without limitation, any hardware, antenna or apparatus serving the Wireless Network, if any, provided in the Master Declaration.

7.9. Tree Removal. No trees that are more than four (4) inches in diameter at a point twelve (12) inches above the ground, and no ornamental or flowering trees, including, but not limited to, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter, shall be removed from a Lot without prior written approval pursuant to Article 6 hereof. Owners shall also comply with any local ordinance and zoning condition applicable to tree removal. In the event of a conflict between the provisions of this Section and any local ordinance or zoning condition, the more restrictive provision shall govern. This provision shall not apply to the removal of trees by the Declarant or the Association in connection with construction approved under Article 6 hereof.

7.10. Drainage. Catch basins, retention ponds, detention ponds, drainage swales and drainage easement areas are for the purpose of controlling the natural flow of water only. Owners shall not obstruct or alter the drainage flow across or from their Unit after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers, or storm drains without approval in accordance with the provisions of Article 6 hereof.

7.11. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or other planting or thing shall be placed or permitted to remain where, in the opinion of the Board, it would create an unsafe condition.

7.12. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, air conditioning units, heat pumps, swimming pool pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and property. All rubbish, trash and garbage shall be regularly removed, and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the

Community as needed for efficient construction, and to allow an approved builder to bury rocks and trees removed from a building site on such building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except by the Declarant.

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

7.14. Firearms. The use or discharge of firearms in the Community is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns, and other guns of any type, regardless of size.

7.15. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any part of the Common Property except as may be installed by the Association, or upon any Lot without prior written approval in accordance with the provisions of Article 6 hereof. Guidelines detailing acceptable fence styles or specifications may be issued pursuant to Article 6, but in no event may a chain link or barbed wire fence be approved; provided, however, the Declarant and the Association may erect any type of fence on the Common Property or elsewhere within the Community as they may deem appropriate, or as necessary to satisfy the requirements of any law, regulation or governmental entity, or for health and safety of Owners and Occupants. In the event that the Owner of a Lot obtains approval to construct a fence in accordance with this Section, the Association shall no longer be obligated to maintain landscaping on enclosed portions of the Lot, and such landscaping shall be the sole responsibility of the Owner.

7.16. Utility Lines. Except as may be permitted under and pursuant to Article 6 hereof, no overhead utility lines, including lines for cable television, shall be installed within the Community, except for temporary lines as required during construction, and lines installed by or at the request of the Declarant.

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

7.18. Lighting. Exterior lighting on any Lot visible from the street shall not be permitted, except for (a) approved lighting as originally installed on a Lot; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; (e) front house illumination of model homes; or (f) other lighting approved under and pursuant to Article 6 hereof.

7.19. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any Lot. Exterior sculpture, fountains, flags, or similar items must be approved under and pursuant to Article 6 hereof.

7.20. Energy Conservation Equipment. No solar energy collector panels, or attendant hardware, or other energy conservation equipment shall be constructed or installed, unless as an integral

and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Declarant, in accordance with the provisions of Article 6 hereof.

7.21. Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Lot without prior written approval in accordance with the provisions of Article 6 hereof, and in no event shall any above-ground swimming pool be permitted.

7.22. Gardens, Play Equipment and Water Features. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals), or garden pool shall be erected on any Lot without the prior written approval in accordance with the provisions of Article 6 hereof.

7.23. Mailboxes. All mailboxes serving Lots shall be approved in accordance with the provisions of Article 6 hereof. Identical replacement mailboxes may be installed without further approval; but no modification to or change in mailboxes may be made unless approved in accordance with the provisions of Article 6 hereof.

7.24. Clotheslines. No exterior clotheslines of any type shall be permitted upon any Residential Lot.

7.25. Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant on any Lot, or any part of any easement area associated therewith, without prior approval in accordance with the provisions of Article 6 hereof.

7.26. Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades, or any other purpose. The side of all window treatments which can be seen at any time from the outside of any structure located on a Lot must be white or off-white.

7.27. Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn, or other structure may be used as a residence, either temporarily or permanently, without written approval in accordance with the provisions of Article 6 hereof. However, this Section shall not be construed to prevent Declarant 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 or any builder from developing, constructing, marketing, or maintaining model homes or speculative housing within the Community.

7.28. Ponds and Streams. Except as herein provided, all storm water retention or detention ponds and streams within the Community shall be used for aesthetic amenities and storm water drainage only; no other use thereof, including, without limitation, swimming, ice staking, playing, or use of personal flotation devices, and other recreation, shall be permitted, without the written consent of the Board of Directors. The Association and/or 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 the ponds or streams within the Community. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes, or other refuse in any storm water retention ponds or streams within the Community. Applicable governmental agencies, the Declaration and the Association, shall have the sole right to control the water level of all bodies of water located within the

Community, and to control the growth and eradication of plants, fowls, reptiles, animals, fish, and fungi in and around any storm water retention ponds and streams within the Community. Owners shall have no riparian or littoral rights with respect to the waters in any stream within the Community, and shall not be permitted to withdraw water from any stream as may exist in the Community without the prior written consent of the Board of Directors.

7.29. Stream Buffer. Land-disturbing activities shall not be conducted within any stream buffer area as shown on the recorded subdivision plats for the Community, except with prior written approval under Article 6 hereof, and compliance with Georgia law, including, without limitation, the Control of Emission and Sedimentation Act, O.C.G.A. § 12-7-1, *et seq.*, as amended from time to time.

7.30. Traffic Regulations. All vehicular traffic on the private streets, drives, and alleys in the Community shall be subject to the provisions of the state and local laws concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic; including reasonable safety measures and speed limits, and including modifications of those in force on public streets within the Community. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of 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. 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 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.

Article 8.

Restriction on Leasing

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

8.2. Definitions.

8.2.1. Leasing means regular, exclusive occupancy of a Lot by any person(s) other than the Owner, for which the Owner received any consideration or benefit; including, but not limited to, a fee, rent, gratuity, or emolument. For purposes hereof, the following shall not constitute leasing: (i) occupancy by a roommate of an Owner Occupant; (ii) occupancy by a member of the Owner's family; (iii) occupancy by one or more wards, if the Lot is owned by their legal guardian; or (iv) occupancy by one or more beneficiaries of a trust, if the Lot is owned in trust by the trustee.

8.2.2. Open Leasing Status. Any Lot that is designated as being in "Open Leasing Status" shall authorize a Lot to be leased at any time. For purposes of this Section only, a lease shall continue, regardless of extensions or renewals, for so long as the existing lessee remains as lessee. The

lease shall terminate at such time as the existing lessee ceases to be lessee. Unless so converted to Restricted Leasing Status, a Lot designated as being in Open Leasing Status shall remain in Open Leasing Status until such time as title to the Lot is conveyed or transferred to another person or entity, after which conveyance the Lot shall be converted to Restricted Leasing Status, regardless of the continued occupancy by the same lessee, unless the new Owner requests that the Lot remain in Open Leasing Status within ninety (90) days of said conveyance. Open Leasing Status may be temporarily conferred upon a Lot as provided hereinafter, or may be applied for as provided below.

8.2.3. Restricted Leasing Status. Any Lot that is designated as being in "Restricted Leasing Status" shall prohibit a Lot Owner from leasing his or her Lot, except as may be provided below. All Lots shall be in Restricted Leasing Status unless converted to Open Leasing Status as provided in this Section.

8.3. General. No Owner of a Lot in Restricted Leasing Status may lease his or her Lot if ten percent (10%) of the Lots in the Community are in Open Leasing Status, except as provided below for cases of undue hardship. Any Owner of a Lot in Restricted Leasing Status may apply in writing to the Board of Directors for conversion to Open Leasing Status in accordance with rules and regulations promulgated by the Board of Directors. Upon receipt of such written application, the Lot shall be placed at the end of a waiting list for each building for conversion to Open Leasing Status. At such times as less than ten percent (10%) of the Lots in the Community are in Open Leasing Status, the Board shall notify the Owner of the Lot at the top of the waiting list of its conversion to Open Leasing Status, and such Owner shall have ninety (90) days within which to lease the Lot, or it shall automatically revert to Restricted Leasing Status. Any Lot in Open Leasing Status shall automatically be converted to Restricted Leasing Status if the Lot is not subject to an approved lease for ninety (90) or more consecutive days.

8.4. Undue Hardship. Notwithstanding the provisions above, the Board of Directors shall be empowered to allow reasonable leasing of a Lot upon application in accordance with this Article to avoid undue hardship, including, but not limited to, the following situations: (1) a Lot Owner must relocate his or her residence outside the Atlanta metropolitan area, and cannot, within six (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; (2) the Owner dies and the Lot is being administered by his or her estate; and (3) the Owner takes a leave of absence or temporarily relocates, 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. 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 the requisite written approval of the Board, may lease their Lots for such duration as the Board reasonably determines is necessary to prevent undue hardship.

Any 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. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application. When an application is approved, the Owner shall provide the Board with the name and phone number of the lessee, and the Owner's address other than at the Lot, and other such information as the Board may reasonably require, within ten (10) days after a lease has been signed by both parties.

The Board shall have the power to make and enforce reasonable rules and regulations, and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Section. Any transaction which does not comply with this Article shall be voidable at the option of the Board of Directors.

8.5. Leasing Provisions. Such leasing as is permitted by this Article shall be governed by the following provisions:

8.5.1. General. Lots may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing in a form approved by the Board prior to the effective date of the lease. The Board shall maintain in its files and, upon request, shall provide to any Owner, a form which is deemed acceptable. There shall be no subleasing or assignment of leases unless approved in writing by the Board. All leases must be for an initial term of at least one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (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 phone number of the lessee, and the Owner's address other than at the Lot, and other such information as the Board may reasonably require within ten (10) days after a lease has been signed by both parties. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations, and the lease form shall provide that the Owner has made available to the lessee copies of the Declaration, Bylaws, and the rules and regulations. 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.

8.5.2. Notice. At least seven (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. The Board shall approve or disapprove the form of said lease. In the event 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.

8.5.3. Liability for Assessments, Use of Common Property, 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:

8.5.3.1. Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee shall abide and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto, and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure such compliance. Owner agrees to cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and is responsible for all violations caused by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable, and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. In the event that the lessee or a person living with the lessee violates the Declaration, Bylaws, or a rule or regulation for which a fine is

imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the provisions contained herein. If the fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot.

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

8.5.3.2. Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property of the Association, and the use of any and all recreational facilities and other amenities as provided in the Master Declaration, if any.

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

8.6. Mortgagee Exemption. This Article shall not apply to any leasing transaction entered into by the Declarant, the Association, or an institutional 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.

8.7. Rights Reserved by Declarant. Notwithstanding the restriction on the percentage of Lots permitted to be in Open Leasing Status at any time as set forth above, Declarant may grant Open Leasing Status to the Owner of any Lot(s). The extent and duration of Open Leasing Status granted by Declarant shall be determined solely by Declarant. Any Open Leasing Status granted by 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.

Article 9.
Insurance and Casualty Losses

9.1. **Insurance on Common Property.** The Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association ("Fannie Mae"), the U.S. Department of Veterans Affairs ("VA"), and the U.S. Department of Housing and Urban Development ("HUD"), as applicable to the Community. Accordingly, the Board of Directors shall obtain casualty insurance for all insurable improvements located on the Common Property which the Association is obligated to maintain; provided, however, nothing contained herein shall be construed as obligating the Association to obtain insurance for any portion of a Lot. This insurance shall provide, at a minimum, fire and extended coverage, 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. The Board of Directors shall obtain a public liability policy applicable to the Common Property, covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). Policies may contain a reasonable deductible as determined by the Board of Directors. In addition to the other insurance required by this Section, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the policy is in force, or any lesser amount of fidelity coverage allowable under the applicable Fannie Mae guidelines. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

9.2. **Individual Insurance.** 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 carry all-risk casualty insurance on all structures, and a liability policy covering damage or injury occurring on the Owner's property. The casualty insurance 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. The policies required hereunder shall be in effect at all times, and a copy of such policies shall be furnished to the Association upon request. In the event that any Owner of a Lot fails to obtain insurance as required by this Declaration, the Association may purchase such insurance on behalf of the Lot Owner and assess the cost thereof to the Owner as a specific assessment.

9.3. **Damage and Destruction – Insured by Association.** Immediately after damage or destruction by fire or other casualty to any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors 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 necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, a proposal not to repair or reconstruct said property is approved by at least seventy-five percent (75%) of the Total Association Vote and the Declarant. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members of the Association, levy a special assessment against the Owner of each Lot. Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction, or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed, and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition.

9.4. Damage and Destruction – Insured by Owners. Improvement on a Lot damaged by fire or other casualty shall be repaired or reconstructed in a manner consistent with the original construction, or such other plans and specifications as are approved in accordance with Article 6 of this Declaration. The repair or reconstruction shall be completed within seventy-five (75) days after the damage occurred or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period, and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot, and remove all debris and ruins therefrom within seventy-five (75) days after such damage occurred, and thereafter maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay all costs which are not covered by insurance proceeds.

Article 10.

Mortgagee Provisions

10.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor, and the Lot number, therefore becoming an “eligible holder”), will be entitled to timely written notice of (a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

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

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

Article 11.

Easements

11.1. General. Each Lot shall be subject to those easements, if any, shown or set forth on the recorded subdivision plats for the Community, as amended from time to time, as well as the easements now or hereafter established by the Declarant in this Declaration, or by any other document recorded in the Office of the Clerk of Superior Court of Cobb County, Georgia.

11.2. Easements for Use and Enjoyment – Common Property. Except as otherwise provided herein, every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the Occupants of the Owner's Lot, in and to the Common Property, which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

(a) The right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least two-thirds (2/3) of the Lots (other than Declarant) and the consent of Declarant, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements, and privileges herein reserved or established for the benefit of Declarant or any Owner, or the holder of any Mortgage encumbering any Lot or other property located within the Community. (Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant or any Owner, or the holder of any Mortgage encumbering any Lot or other property located within the Community;

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

(c) The right of the Association to transfer or convey all or any portion of the Common Property upon the approval of the Owners of at least two-thirds (2/3) of the Lots, and the consent of Declarant;

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

(e) All encumbrances and other matters shown by the public records affecting title to the Common Property.

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

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

11.5. Easement for Maintenance – Association. Declarant hereby grants to the Association a perpetual easement across the exterior portions of all Lots as may be reasonably necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Lots, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Association or its contractors at their sole expense.

11.6. Easement for Maintenance – Owners. Declarant hereby reserves for the benefit of each Lot reciprocal appurtenant easements between adjacent Lots for the purpose of maintaining or repairing the improvements located on each Lot, which easement shall extend to a distance of three (3) feet, as measured from any point on the common boundary between the Lots. The easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the improvements located on the Lot over which this easement is exercised which arises out of such maintenance or repair work.

11.7. Easement for Signage, Lighting, Landscaping, and Similar Items. There is hereby reserved to Declarant, for so long as it retains its rights as Declarant, a nonexclusive easement over all Lots and Common Property for a distance of ten (10) feet behind any Lot line which parallels a street (whether public or private), for the purpose of erecting and maintaining street intersection signs,

directional signs, temporary promotional signs, plantings, street lights, entrance features, and/or "theme areas," lighting, stone, wood, or masonry wall features, and/or related landscaping.

11.8. Easement for Entry Features and Streetscapes. There is hereby reserved to the Declarant and granted to the Association an easement for ingress, egress, installation, construction, landscaping, and maintenance of entry features and similar streetscapes for the Community, over and upon any portion of a Lot containing such entry features or streetscapes, as may be more fully described on the recorded subdivision plats 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 entry features and streetscapes, and the right to grade the land under and around the same.

11.9. Easement for Drainage. There is hereby reserved to the Declarant, and granted to the Association and any approved builder, a blanket easement across all Lots for creating and maintaining satisfactory storm water drainage in the Community; provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the structure. 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. This easement expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the land, or to take any other similar action reasonably necessary; following which Declarant, or the Association, or an approved builder, as applicable, shall restore the affected property to its original condition as near as practicable. It is anticipated that increased storm water run off across downstream Lots will result from the construction of impervious surface within or adjacent to the Community. Neither the Declarant, the Association, nor any builder or Owner constructing according to plans and specifications approved under Article 6 hereof, shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction within the Community.

11.10. Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, architectural guidelines, and amendments thereto, Declarant reserves an easement across the Community to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's and approved home builders' development, construction and sales activities related to property hereby and hereafter subjected to this Declaration, or for the development, construction or benefit of any neighboring property including, but not limited to, the right of access, ingress and egress for vehicular and pedestrian traffic, and construction activities over, under, on, or in the Community, including, without limitation, any Lot; the right to tie into any portion of the Community with streets, driveways, paths, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to grant easements over, under, in or on the Community, including without limitation the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to convert Lots (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant and approved home builders may

use residences, offices or other buildings owned or leased by Declarant or approved home builders as model residences and sales offices without charge. This Section shall not be amended without the Declarant's written consent until the Declarant's rights hereunder have terminated as herein provided.

11.11. Easement for Private Streets, Alleys, Sidewalks and Signs. 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 (a) over and across the private streets and alleys within the Community as depicted on the subdivision plat(s) recorded in the Office of the Clerk of Superior Court of Cobb County, Georgia. The right-of-way easement herein granted shall permit joint usage of such easement by (i) the Owners and Occupants, (ii) the legal representatives, successors and assigns of the Owners, and (iii) invitees and licensees of the Owners and Occupants. 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. Declarant hereby reserves for the benefit of Declarant and grants to the Association as Common Property, the perpetual non-exclusive right and easement upon, over and across those utility easement areas and streets, alleys and roads for the installation, maintenance, and use of such streets and roads, sidewalks, traffic directional signs, grading for proper drainage of said streets and roads, and related activities and improvements.

Article 12.

General Provisions

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

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

12.3. Self-Help. In addition to any other remedies provided for herein, the Association, the Declarant, the ARC, or their respective duly authorized agents, shall have the power to enter upon any Lot or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the violating Owner shall be given ten (10) days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required herein or by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.

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

12.5. Termination of Rights of Declarant. The rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation, and the Bylaws shall cease and be of no further force and effect upon the earlier of (a) the date that the Declarant no longer owns any property in the Community, and Declarant no longer has the right to unilaterally annex additional property to the Community as provided herein, and a certificate of occupancy has been issued for a structure on each Lot in the Community; or (b) the date of recording by Declarant in the real estate records of the county where the Community is located of a written instrument terminating all of Declarant's rights hereunder.

12.6. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination, which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including without limitation, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company, including without limitation, the U.S. Department of Housing and Urban Development, and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner of such Lot consents thereto in writing. Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Owner. The Board of Directors, with the written consent of the Declarant, and without a vote of the members, may amend this Declaration for the sole purpose of electing to be governed by the provisions of the Georgia Property

Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.* In addition to the above, this Declaration may be amended upon the affirmative vote or written consent or any combination thereof of the Owners of at least two-thirds (2/3) of the Lots and the consent of Declarant. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained, and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given. The amendments authorized by this Section may be of uniform or non-uniform application, and Owners shall be deemed to have agreed that the Declaration may be amended as provided herein, and that any rule of law requiring unanimous approval of amendments having a non-uniform application shall not apply.

12.7. Challenges to Amendment. Any action to challenge the validity of an amendment adopted as provided herein must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

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

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

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

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

12.12. Preparer. This Declaration was prepared by Neil S. Morrisroe, Esq., McLain & Merritt, P.C., 3445 Peachtree Road, N.E., Suite 500, Atlanta, Georgia 30326.

12.13. Notices. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Lot, and to the Declarant or the Association at the address of their respective registered agent on file with the Secretary of State of the

State of Georgia. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by private courier service. The time period in which a response to any such notice must be given, or any action taken with respect thereto, shall commence to run from the date of personal delivery or the date of receipt shown on the return receipt. Rejection or other refusal to accept, or the inability to deliver because of changed address of which no notice was given, shall be deemed to be receipt of the notice sent.

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

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

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

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

12.18. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote, and the consent of the Declarant. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided herein; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings

instituted against it; or (e) 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. This Section shall not be amended unless such amendment is made unilaterally by the Declarant as provided herein, or is approved by the percentage votes necessary to institute proceedings as provided above.

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

[Signatures on Following Page]

15th IN WITNESS WHEREOF, the Declarant herein hereby executes this instrument under seal, this day of October, 2007.

Signed, sealed and delivered in the presence of:

DECLARANT:

AVIGNON, LLC

By: _____

Jack G. Williams, Manager

Unofficial Witness

Notary Public

My Commission expires

[Notary Seal]



LEGAL DESCRIPTION: SINGLE-FAMILY PHASE OF AVIGNON

ALL THAT PIECE PARCEL OR LOT OF LAND LYING AND BEING IN LAND LOTS 886 AND 887 OF THE 17th DISTRICT OF COBB COUNTY, GEORGIA AND HAVING THE FOLLOWING METES AND BOUNDS TO WIT:

COMMENCING AT THE COMMON CORNER OF LAND LOTS 840, 841, 886 AND 887 SAID POINT BEING THE POINT-OF-COMMENCEMENT, (P.O.C.); THENCE ALONG THE WESTERN LAND LOT LINE OF LAND LOT 887 SOUTH 01 DEGREES 19 MINUTES 26 SECONDS WEST (S01°19'26"W) FOR A DISTANCE OF 457.04' TO A POINT; THENCE TURNING AND LEAVING SAID WESTERN LAND LOT LINE AND CONTINUING NORTH 63 DEGREES 45 MINUTES 42 SECONDS EAST (N63°45'42"E) FOR A DISTANCE OF 82.25' TO A POINT; THENCE NORTH 63 DEGREES 49 MINUTES 50 SECONDS EAST (N63°49'50"E) FOR A DISTANCE OF 15.99' TO A POINT; THENCE NORTH 83 DEGREES 12 MINUTES 08 SECONDS EAST (N83°12'08"E) FOR A DISTANCE OF 14.60' TO A POINT; THENCE NORTH 64 DEGREES 13 MINUTES 01 SECONDS EAST (N64°13'01"E) FOR A DISTANCE OF 53.27' TO A POINT; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 47.93' AND AN ARC LENGTH OF 52.83', SAID CURVE BEING SUBTENDED BY A CHORD BEARING OF SOUTH 84 DEGREES 17 MINUTES 01 SECONDS EAST (S84°17'01"E) FOR A CHORD DISTANCE OF 50.20' TO A POINT; THENCE SOUTH 53 DEGREES 11 MINUTES 36 SECONDS EAST (S53°11'36"E) FOR A DISTANCE OF 27.49' TO A POINT, SAID POINT; BEING THE POINT-OF-BEGINNING. (P.O.B.)

THENCE NORTH 01 DEGREES 22 MINUTES 02 SECONDS EAST (N01°22'02"E) FOR A DISTANCE OF 91.90' TO A POINT; THENCE NORTH 49 DEGREES 28 MINUTES 23 SECONDS EAST (N49°28'23"E) FOR A DISTANCE OF 45.68' TO A POINT; THENCE NORTH 43 DEGREES 37 MINUTES 58 SECONDS WEST (N43°37'58"W) FOR A DISTANCE OF 17.68' TO A POINT LOCATED ON THE EASTERN RIGHT-OF-WAY OF PACES VIEW CIRCLE (PRIVATE); THENCE CONTINUING ALONG SAID EASTERN RIGHT-OF-WAY LINE NORTH 01 DEGREES 22 MINUTES 02 SECONDS EAST (N01°22'02"E) FOR A DISTANCE OF 412.00' TO A POINT LOCATED AT THE MITERED INTERSECTION OF THE EASTERN RIGHT-OF-WAY LINE OF PACES VIEW CIRCLE AND THE SOUTHERN RIGHT-OF-WAY LINE OF PACES VIEW TRAIL (PRIVATE); THENCE ALONG SAID SOUTHERN LINE NORTH 46 DEGREES 22 MINUTES 02 SECONDS EAST (N46°22'02"E) FOR A DISTANCE OF 21.92' TO A POINT; THENCE SOUTH 88 DEGREES 37 MINUTES 58 SECONDS EAST (S88°37'58"E) FOR A DISTANCE OF 72.00' TO A POINT; THENCE LEAVING SAID SOUTHERN RIGHT-OF-WAY AND CONTINUING NORTH 47 DEGREES 44 MINUTES 51 SECONDS EAST (N47°44'51"E) FOR A DISTANCE OF 58.71' TO A POINT ON THE EASTERN RIGHT-OF-WAY LINE OF PACES VIEW CIRCLE (PRIVATE); THENCE CONTINUING ALONG SAID EASTERN RIGHT-OF-WAY NORTH 01 DEGREES 22 MINUTES 02 SECONDS EAST

Avignon
Vingo Village
264/570

(N01°22'02"E) FOR A DISTANCE OF 47.50' TO A POINT; THENCE NORTH 01 DEGREES 22 MINUTES 02 SECONDS EAST (N01°22'02"E) FOR A DISTANCE OF 27.71' TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 115.00' AND AN ARC LENGTH OF 70.93', SAID CURVE BEING SUBTENDED BY A CHORD BEARING OF NORTH 16 DEGREES 18 MINUTES 10 SECONDS WEST (N16°18'10"W) FOR A CHORD DISTANCE OF 69.81' TO A POINT; THENCE LEAVING SAID EASTERN RIGHT-OF-WAY AND CONTINUING NORTH 50 DEGREES 59 MINUTES 23 SECONDS EAST (N50°59'23"E) FOR A DISTANCE OF 21.47' TO A POINT; THENCE SOUTH 71 DEGREES 52 MINUTES 00 SECONDS EAST (S71°52'00"E) FOR A DISTANCE OF 109.49' TO A POINT; THENCE SOUTH 71 DEGREES 52 MINUTES 00 SECONDS EAST (S71°52'00"E) FOR A DISTANCE OF 61.29' TO A POINT; THENCE SOUTH 78 DEGREES 45 MINUTES 25 SECONDS EAST (S78°45'25"E) FOR A DISTANCE OF 49.92' TO A POINT; THENCE SOUTH 70 DEGREES 48 MINUTES 55 SECONDS EAST (S70°48'55"E) FOR A DISTANCE OF 88.32' TO A POINT; THENCE TURNING AND CONTINUING SOUTH 01 DEGREES 22 MINUTES 02 SECONDS WEST (S01°22'02"W) FOR A DISTANCE OF 230.22' TO A POINT; THENCE TURNING AND CONTINUING NORTH 59 DEGREES 44 MINUTES 36 SECONDS WEST (N59°44'36"W) FOR A DISTANCE OF 42.36' TO A POINT; THENCE SOUTH 80 DEGREES 09 MINUTES 24 SECONDS WEST (S80°09'24"W) FOR A DISTANCE OF 48.31' TO A POINT; THENCE SOUTH 43 DEGREES 27 MINUTES 24 SECONDS WEST (S43°27'24"W) FOR A DISTANCE OF 51.31' TO A POINT; THENCE SOUTH 26 DEGREES 39 MINUTES 24 SECONDS WEST (S26°39'24"W) FOR A DISTANCE OF 49.83' TO A POINT; THENCE SOUTH 15 DEGREES 43 MINUTES 24 SECONDS WEST (S15°43'24"W) FOR A DISTANCE OF 32.01' TO A POINT; THENCE SOUTH 15 DEGREES 43 MINUTES 24 SECONDS WEST (S15°43'24"W) FOR A DISTANCE OF 22.99' TO A POINT; THENCE SOUTH 16 DEGREES 10 MINUTES 24 SECONDS WEST (S16°10'24"W) FOR A DISTANCE OF 33.85' TO A POINT; THENCE SOUTH 16 DEGREES 10 MINUTES 24 SECONDS WEST (S16°10'24"W) FOR A DISTANCE OF 20.54' TO A POINT; THENCE SOUTH 20 DEGREES 26 MINUTES 24 SECONDS WEST (S20°26'24"W) FOR A DISTANCE OF 42.47' TO A POINT; THENCE SOUTH 20 DEGREES 26 MINUTES 24 SECONDS WEST (S20°26'24"W) FOR A DISTANCE OF 11.83' TO A POINT; THENCE SOUTH 36 DEGREES 05 MINUTES 24 SECONDS WEST (S36°05'24"W) FOR A DISTANCE OF 53.32' TO A POINT; THENCE SOUTH 16 DEGREES 21 MINUTES 24 SECONDS WEST (S16°21'24"W) FOR A DISTANCE OF 10.35' TO A POINT; THENCE SOUTH 16 DEGREES 21 MINUTES 24 SECONDS WEST (S16°21'24"W) FOR A DISTANCE OF 9.47' TO A POINT; THENCE SOUTH 23 DEGREES 42 MINUTES 36 SECONDS EAST (S23°42'36"E) FOR A DISTANCE OF 28.72' TO A POINT; THENCE SOUTH 12 DEGREES 43 MINUTES 36 SECONDS EAST (S12°43'36"E) FOR A DISTANCE OF 55.87' TO A POINT; THENCE SOUTH 33 DEGREES 29 MINUTES 24 SECONDS WEST (S33°29'24"W) FOR A DISTANCE OF 34.83' TO A POINT; THENCE SOUTH 33 DEGREES 29 MINUTES 24 SECONDS WEST (S33°29'24"W) FOR A DISTANCE OF 24.66'

TO A POINT; THENCE SOUTH 60 DEGREES 35 MINUTES 24 SECONDS WEST (S60°35'24"W) FOR A DISTANCE OF 52.61' TO A POINT; THENCE SOUTH 69 DEGREES 43 MINUTES 24 SECONDS WEST (S69°43'24"W) FOR A DISTANCE OF 18.41' TO A POINT; THENCE SOUTH 69 DEGREES 43 MINUTES 24 SECONDS WEST (S69°43'24"W) FOR A DISTANCE OF 35.94' TO A POINT; THENCE SOUTH 81 DEGREES 42 MINUTES 24 SECONDS WEST (S81°42'24"W) FOR A DISTANCE OF 44.05' TO A POINT; THENCE SOUTH 81 DEGREES 42 MINUTES 24 SECONDS WEST (S81°42'24"W) FOR A DISTANCE OF 18.83' TO A POINT; THENCE NORTH 69 DEGREES 21 MINUTES 36 SECONDS WEST (N69°21'36"W) FOR A DISTANCE OF 16.44' TO A POINT; THENCE NORTH 52 DEGREES 35 MINUTES 36 SECONDS WEST (N52°35'36"W) FOR A DISTANCE OF 39.50' TO A POINT; THENCE NORTH 53 DEGREES 11 MINUTES 36 SECONDS WEST (N53°11'36"W) FOR A DISTANCE OF 14.11' TO THE POINT-OF-BEGINNING. (P.O.B.)

SAID TRACT OF LAND CONTAINING 4.80 ACRES = 208,914 SQ.FT.

EXHIBIT "B"

**Additional Property Which May Unilaterally
be Submitted to This Declaration by Declarant**

All that tract or parcel of land lying and being in Land Lots 886 and 887 of the 17th District, 2nd Section, of Cobb County, Georgia.

EXHIBIT "C"

BYLAWS

OF

**THE VILLAS AT AVIGNON AT VININGS
COMMUNITY ASSOCIATION, INC.**

PREPARED BY:

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Atlanta, GA 30326

BYLAWS
OF
THE VILLAS AT AVIGNON AT VININGS
COMMUNITY ASSOCIATION, INC.

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BYLAWS
OF
THE VILLAS AT AVIGNON AT VININGS
COMMUNITY ASSOCIATION, INC.

Article 1.

Name, Membership, Applicability and Definitions

1.1. **Name.** The name of the corporation shall be The Villas at Avignon at Vinings Community Association, Inc. (hereinafter sometimes referred to as the "**Association**").

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

1.3. **Definitions.** The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit, or the meanings given in the Georgia Nonprofit Corporation Code (O.C.G.A. § 14-3-401, *et seq.*) (the "**Nonprofit Code**"). Statutory references shall be construed as meaning the referenced statute or portion thereof as the same may exist from time to time.

Article 2.

Association: Meeting, Quorum, Voting, Proxies

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

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

2.3. **Special Meetings.** The President or the Board of Directors may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association upon the delivery of a petition signed and dated by members entitled to cast at least twenty-five percent (25%) of the Total Association Vote, and describing the purpose or purposes for which it is to be held. The notice of any special meeting shall state the date, time, and place of such meeting, and the purpose(s) thereof. No business shall be transacted at a special meeting, except those matters that are within the purpose or purposes described in the notice.

2.4. **Record Date.** The Board of Directors shall fix in advance a record date for a determination of members entitled to notice of and to vote at any meeting of members or any

adjournment thereof, or to make a determination of members for any other purpose, such date to be not more than seventy (70) days before the date on which the particular action requiring such determination of members is to be taken.

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

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

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

2.8. Membership List. After the record date for any meeting is established by the Board of Directors, the Secretary shall prepare an alphabetical list of the names and addresses of all of the members who are entitled to notice of the meeting. Beginning at least two (2) business days after notice is given of the meeting for which the list was prepared, the list of members shall be available for inspection by any member or a member's agent or attorney (1) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting or upon request; or (2) during ordinary business hours at the Association's principal office, or at such other reasonable place in the city where the meeting will be held as may be specified in the notice. In the event that the Association makes the list available on an electronic network, the Association may take reasonable steps to ensure that such information is available only to members of the Association. In addition, the list shall be available for inspection at the meeting or any adjournment thereof.

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

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

2.11. Quorum. The presence, in person or by proxy, of members entitled to cast at least twenty-five percent (25%) of the votes entitled to be cast at the meeting shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

2.12. Action Without a Formal Meeting. Any action required or permitted to be approved by the members may be approved without a meeting if one (1) or more consents, in writing or by electronic transmission, setting forth the action so taken, shall be signed, either personally or by an electronic transmission, and dated by members (including the Declarant, if the consent of the Declarant is required) holding the voting power required to pass such action at a meeting held on the record date for such action. The record date for such action shall be the date that the first member signs a consent. Such action shall be approved with the Secretary receives a sufficient number of such consents dated within seventy (70) days of the record date for such action. If less than unanimous consent is obtained, the approval shall be effective ten (10) days after the Secretary gives written notice of the approval to all members who did not sign a consent. Each 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.

2.13. Action by Written Ballot. Any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting, if approved by ballot in writing or by electronic transmission as provided herein. The Association shall deliver a ballot in writing or by electronic transmission to each member entitled to vote on the matter. The ballot in writing or by electronic transmission shall set forth each proposed action, and provide an opportunity to vote for or against each proposed action. All solicitations or votes by ballot in writing or electronic transmission shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by

which a ballot must be received by the Association in order to be counted. A timely ballot in writing or by electronic transmission received by the Association may not be revoked. Approval by ballot in writing or by electronic transmission of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The results of each action by ballot in writing or by electronic transmission shall be certified by the Secretary, and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

Article 3.

Board of Directors: Number, Powers, Meetings

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

3.2. **Directors Appointed by the Declarant.** The Declarant shall have the right to appoint or remove any member or members of the Board of Directors, or any officer or officers of the Association, until such time as the first of the following events shall occur: (a) the expiration of ten (10) years after the date of the recording of the Declaration; (b) the date on which all of the Lots planned by Declarant to be a part of the Community shall have been improved with a dwelling, and conveyed to an Owner for occupancy as a resident; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. The directors appointed by the Declarant need not be Owners or residents in the Community. The total number of Lots planned by Declarant for the Community shall initially be the number of Lots shown on the Declarant's land use plan for the development, as it may be amended from time to time. Inclusion of property on the land use plan shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land use plan bar Declarant from subjecting such property to the Declaration. The final total number of Lots planned for the Community shall be the actual number of Lots shown on the recorded subdivision plats for the Community, regardless of any different number of Lots shown from time to time on the land use plan.

3.3. **Number of Directors.** During the period that the Declarant has the right to appoint and remove the officers and/or directors of the Association as provided above, the Board of Directors shall consist of three (3) members. Thereafter, the Board shall consist of at least three (3) members who shall be elected as provided below. In the event there are more than three (3) separately designated Neighborhoods in the Community, the Board shall consist of at least as many directors as there are Neighborhoods in the Community.

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

3.5. Election and Term of Office. After the Declarant's right to appoint directors and/or officers terminates, the Association shall call a special meeting (or take action under Section 2.12 or Section 2.13 in lieu of a meeting), and the members shall elect at least three (3) directors. The members of the Board of Directors shall hold office for one (1) year, and shall continue in office until their respective successors shall have been elected and take office. At annual meetings of the membership thereafter (or pursuant to Section 2.12 or Section 2.13 in lieu of a meeting), directors shall be elected. At least one (1) director shall be elected from each Neighborhood, with the remaining directors (if any) to be elected at large. The candidates receiving the most votes shall be elected. Notwithstanding anything herein to the contrary, directors shall be elected from the Community hereunder so that in every year the Board shall be composed of at least one (1) director from each Neighborhood in the Community; provided, however, that in the event a qualified candidate for election to the Board from a particular Neighborhood cannot be located, the director shall be elected from the Community at large, without regard to the particular Neighborhood in which that director lives.

3.6. Removal of Directors. At any annual, regular, or special meeting of the Association, any one (1) or more of the members of the Board of Directors elected by the members may be removed, with or without cause, by a majority of the Total Association Vote, and a successor may then and there be elected to fill the vacancy thus created. The notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is removal of a director. A director whose removal by the members has been proposed shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings, or who is delinquent in the payment of an assessment for more than thirty (30) days, may be removed by a majority vote of the remaining directors.

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

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

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

3.10. Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President, or by any two (2) directors. The notice shall specify the date, time and place of the meeting, and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery (including commercial delivery service) to such director's home or office; (b) written notice by first class mail, postage prepaid; (c) by telephone communication (including facsimile), either directly to the director or to the director's home or office; or (d) issued electronically in accordance with the Nonprofit Code, if the director has consent in writing to such method of delivery, and has provided the Board with an address regarding the same. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited

with the U.S. Postal Service at least four (4) days before the time set for the meeting. Notices given by personal delivery, electronic transmission, or telephone shall be given at least two (2) days before the day set for the meeting.

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

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

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

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

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

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

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

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

hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

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

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

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

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

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

(f) making and amending rules and regulations;

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

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

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

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

(k) authorization of contracts on behalf of the Association.

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

3.20. Borrowing. The Board of Directors shall have the power to borrow money without the approval of the members of the Association; provided, however, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for special assessments,

in the event that the total amount of such borrowing exceeds or would exceed ten percent (10%) of the annual budget of the Association.

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

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

- (i) the nature of the violation, the fine to be imposed, and the date, not less than ten (10) days or, in the event of an unapproved sign, twenty-four (24) hours, from the date of the notice, that the fine will take effect;
- (ii) that the violator may, within ten (10) days from the date of the notice, or, in the event of an unapproved sign, twenty-four (24) hours, request a hearing regarding the fine imposed;
- (iii) the name, address and telephone numbers of a person to contact to challenge the fine;
- (iv) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and
- (v) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days or, in the event of an unapproved sign, twenty-four (24) hours, of the date of the notice.

(b) If a hearing is requested, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. No fine shall be imposed prior to the date that is five (5) days or, in the event of an unapproved sign, twenty-four (24) hours, after the date of the hearing.

Article 4. **Officers**

4.1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

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

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

4.4. Salaries. The officers shall receive no compensation.

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

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

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

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

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

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

Article 5.
Committees

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

Article 6.
Miscellaneous

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

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

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

6.4. **Amendment.** These Bylaws may be amended by the Board of Directors with the consent of the Declarant if such amendment is necessary to (a) bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) enable any title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; (c) enable an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to make or purchase Mortgage loans on the Lots subject to the Declaration; (d) enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to the Declaration; or (e) comply with the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.* In addition, these Bylaws may be amended upon the affirmative vote of at least two-thirds (2/3) of the Total Association Vote and the consent of Declarant.

6.5. **Notices.** Unless otherwise provided in these Bylaws or the Declaration, all notices, demands, bills, statements, or other communications under these Bylaws or the Declaration shall be in writing, and shall be deemed to have been duly given if delivered by personal delivery; by United State mails, first class postage prepaid; or by electronic transmission:

(a) If to an Owner, at the address of the Lot of such Owner; or if by electronic transmission, by a form of electronic transmission consented to by the Owner and otherwise in accordance with the Nonprofit Code;

(b) If to an Occupant, at the address of the Lot occupied; or if by electronic transmission, by a form of electronic transmission consented to by the Occupant and otherwise in accordance with the Nonprofit Code; or

(c) If to the Association, the managing agent or the Board of Directors, at the principal office of the Association or the managing agent, if any, or at such other mailing address as shall be designated in writing by the Board of Directors; or if by electronic transmission, by a form of electronic transmission consented to by the Board of Directors as provided in a resolution of the Board of Directors and otherwise in accordance with the Nonprofit Code.

6.6. Electronic Records, Signatures and Documents. To the extent permitted by Georgia law, the Declaration and these Bylaws, the Association and its members, 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 has been approved by the Board of Directors in its sole discretion. Acceptable technological means of creating an electronic transmission may include, without limitation, electronic communication over the Internet, the community or other network, whether by direct connection, Internet, telecopier or e-mail. An electronic transmission which is transmitted by a member that evidences a member's consent or approval on a ballot, requests or demands an action to be taken by the Association, or provides notice to the Association under these Bylaws or the Declaration, shall be deemed to be written, signed, and dated for the purposes of these Bylaws and the Declaration; provided that any such electronic transmission sets forth or is delivered with information from which the Association can determine (1) that the electronic transmission was transmitted by the member, and (2) the date on which such member transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent, request, demand, or notice was signed. Except as may be otherwise provided in the Declaration or these Bylaws, records, signatures and notices which are accepted, created or given by the Board of Directors shall not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically.

(a) Use of Electronic Signatures. Whenever the Declaration or these Bylaws authorized an electronic communication, the Board of Directors may accept an electronic signature as valid if

- (i) the signature is easily capable of verification, under the sole control of the signatory, and attached to the electronic document in such a way that the document cannot be modified without invalidating the signature; or
- (ii) the Board of Directors reasonably believes that the signatory affixed the signature with the intent to sign the electronic document, and that the electronic document has not been modified since the signature was affixed.

(b) Verification and Liability for Falsification. The Board of Directors may require reasonable verification of any electronic signature, document, record or instrument. Pending verification, the Board of Directors may refuse to accept any electronic signature, document, record or instrument which, in the sole discretion of the Board of Directors, is not clearly authentic. Neither the Board of Directors nor the Association shall be liable to any member or any other Person for accepting or acting in reliance upon an electronic signature or electronic document which the Board of Directors reasonably believes to be authentic. Any member or Person who negligently, recklessly or intentionally

submits any falsified electronic document or unauthorized electronic signature shall fully indemnify the Association for actual damages, reasonable attorney's fees, and expenses incurred as a result of such act(s).

(c) Non-Technology Alternatives. If any Owner, Occupant, or third party does not have the capability or desire to conduct business using electronic or other technological means, the Association shall make reasonable accommodation, at its expense, for such person to conduct business with the Association without use of such electronic or other means until such means has become generally (if not universally) accepted in similar projects in the area.