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

FOR AMEND SEE  
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**FOR**

**VILLAGE TOWNHOMES AT AVIGNON**

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**DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS  
FOR VILLAGE TOWNHOMES AT AVIGNON**

THIS DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR VILLAGE TOWNHOMES AT AVIGNON (hereinafter referred to as this "Declaration") is made as of the 19th day of March, 2008, by AVIGNON, LLC, a Georgia limited liability company.

**BACKGROUND STATEMENT**

Declarant is the Owner of certain real property in Cobb County, Georgia, which is more particularly described in Exhibit "A" attached hereto and made a part hereof.

Declarant intends to develop on the real property described in Exhibit "A" attached hereto, a development to be known as Village Townhomes at Avignon (said real property, together with such additional real property as may be subjected to the provisions of this Declaration in accordance with the provisions of Article 10 hereof, is hereinafter referred to as the "Development"). Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the property now or hereafter made subject to this Declaration. Declarant also desires to establish a method for the administration, maintenance, preservation, use, and enjoyment of the property that is now or hereafter subjected to this Declaration and certain other properties described in this Declaration.

Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined).

The Declarant hereby declares that all of the real property described in Exhibit "A" attached hereto and made a part hereof shall be held, sold, and conveyed subject to this Declaration, which is for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property (as hereinafter defined). The covenants, restrictions, and easements set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, devisees, successors and assigns and to the benefit of the Association.

**ARTICLE 1.  
DEFINITIONS**

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

- 1.1. Association. "Association" means Village Townhomes at Avignon Homeowners Association, Inc. (a non-profit, non-stock, membership corporation organized under the Georgia Non-Profit Corporation Code), its successors and assigns.
- 1.2. Board. "Board" means the Board of Directors of the Association.
- 1.3. By-Laws. "By-Laws" means the By-Laws of the Association.
- 1.4. Commencement Date. "Commencement Date" means the date of this Declaration as set forth above.

1.5. Common Area. "Common Area" means all real and personal property owned by the Association or, in certain instances, over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is the real property described in Exhibit "A," less and except the individual Lots.

1.6. Declarant. "Declarant" means Avignon, LLC, a Georgia limited liability company, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A," or the real property which is intended to become a part of the Development, and provided further in the Instrument of conveyance to any such successor-in-title or assign, or in a separate instrument recorded in the Deed Records of Cobb County, Georgia, such successor-in-title or assign is designated as the "Declarant" hereunder by the party executing such instrument, which party is the "Declarant" hereunder at the time of the execution of such instrument; provided, further, upon such designation of a successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

1.7. Development-Wide Standard. "Development-Wide Standard" means the standard of conduct, maintenance, or other activity generally prevailing in the Development. Such standard may be more specifically determined by the Board and by committees required or permitted to be established pursuant to this Declaration or the By-Laws. Such determination, however, must be consistent with the Development-Wide Standard originally established by the Declarant.

1.8. Lot. "Lot" means portions of the Property upon which Declarant proposes to construct or has constructed a Townhouse for sale, use, and occupancy as a single-family residential dwelling, as such Lots are described on Exhibit "A" attached hereto and incorporated herein by reference, or are now or hereafter shown on a Site Plan, as such boundaries may be modified in accordance with Section 6.4; provided, however, that no portion of the Common Area shall ever be a Lot except as provided in Section 2.4(f) or Section 2.6.

1.9. Master Owners' Association. "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.

1.10. Master Bylaws. "Master Bylaws" means the Bylaws of the Master Owners' Association, as may be amended from time to time.

1.11. Master Declarant. "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.

1.12. Master Declaration. "Master Declaration" means that certain Master Declaration of Protective Covenants, Conditions, Restrictions, and Easements for Avignon at Vinings, recorded on October 10, 2007, at Deed Book 14546, Page 953, 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.

1.13. Member. "Member" means any member of the Association.

1.14. Membership. "Membership" means the collective total of all Members of the Association.

1.15. Occupant. "Occupant" means any person occupying all or any portion of a Residence located within the Development for any period of time, regardless of whether such person is a tenant or the Owner of such property.

1.16. Owner. "Owner" means the record owner (including Declarant), whether one or more persons or entities, of a fee simple title to any Lot; provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

1.17. Parcel. "Parcel" means and refers to separately designated residential areas comprised of various types of housing initially or by annexation made subject to this Declaration. For example, and by way of illustration and not limitation, a condominium development, a townhouse development, and a single family detached home subdivision may each be designated as separate Parcels. If separate Parcel status is desired, the Declarant shall designate in an amendment to this Declaration that such property shall constitute a separate Parcel or Parcels. In the absence of specific designation of separate Parcel status, all property made subject to this Declaration shall be considered a part of the same Parcel. The Board may also grant Parcel status to any area if so requested in writing by the Owners holding at least seventy-five percent (75%) of the total vote entitled to vote thereon in such area.

1.18. Property. "Property" means that certain real property described in Exhibit "A" attached hereto, together with such real property as may be subjected to the provisions of this Declaration in accordance with the provisions of Article 10 hereof.

1.19. Residence. "Residence" means a Townhouse and the Lot on which it is situated. A Townhouse and the Lot upon which it is situated shall not become a Residence until the Lot and Townhouse located thereon shall have been conveyed to a party other than the builder thereof, or the Townhouse has been occupied by an Occupant, whichever shall first occur. The Owner of a Residence shall notify the Association or its designee immediately upon the conveyance of the Lot and Townhouse located thereon to a party other than the builder thereof or the occupancy of the Townhouse by an Occupant.

1.20. Restrictions. "Restrictions" means all covenants, restrictions, easements, charges, liens, and other obligations created or imposed by this Declaration.

1.21. Site Plan. "Site Plan" means the Subdivision Plat prepared by Highland Engineering, Inc., dated May 23, 2007, which is recorded in Plat Book 267, Page 22, Cobb County, Georgia records, together with any future revisions thereof as may be recorded from time to time in the Plat records of the Clerk of the Superior Court of Cobb County, Georgia, and any additional subdivision plats recorded in the Plat records of the Clerk of the Superior Court of Cobb County, Georgia, with respect to additional real property subjected to the provisions of this Declaration in accordance with the provisions of Article 10 hereof.

1.22. Structure. "Structure" means:

(a) any thing or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, doghouse, coop or cage, covered or uncovered patio, deck, recreational equipment, fence, mailbox, driveway, curbing, paving, wall, tree, shrub, artificial vegetation, statue, flagpole, flag (and other forms of landscaping), sign, signboard, lighting fixture, antenna, aerial, satellite dish, or other reception device, or any other temporary or permanent improvement to such Lot;



(b) any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and

(c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not Subsection (b) of this Section 1.18 applies to such change.

1.23. Townhouse. "Townhouse" means an individual townhouse dwelling unit constructed on a Lot, which is intended for independent use and occupancy as a residence for a single family.

## **ARTICLE 2. PROPERTY RIGHTS**

2.1. Lots. Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his Lot, subject to the provisions of this Declaration. Each Lot shall include the Townhouse, garage, and all other improvements and fixtures constructed on or attached to such Lot by Declarant or in accordance with plans and specifications approved by the Board of Directors or the Architectural Control Committee pursuant to Article 5 hereof, and the Limited Common Areas appurtenant to such Lot. Window screens, shutters, window boxes, awnings, exterior lights and light fixtures, gutters and downspouts, eaves, chimneys, and all other fixtures, equipment, and appliances located in or attached to each Lot and the improvements located thereon, including, without limitation, the heating and air conditioning systems for each Lot, are deemed to be a part of such Lot, even though such improvements may protrude beyond the boundaries of the Lot, provided that doorsteps and front porches which are located outside designated boundaries of such Lot but are adjacent and contiguous to such Lot and the improvements thereon, and which serve such Lot, are deemed to be Limited Common Areas appurtenant to such Lot in accordance with the provisions of Section 2.2 hereof. If any chutes, flues, ducts, conduits, wires, pipes, plumbing, or any other apparatus or facilities for the furnishing of utilities or other services to a Lot lie partially within and partially outside of the designated boundaries of the Lot, any portions thereof which serve only that Lot shall be deemed to be a part of that Lot, and any portions thereof which serve more than one Lot or any portion of the Common Area shall be deemed to be a part of the Common Area. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Area as established hereunder, which shall include, but not be limited to, membership in the Association. Each Owner shall automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to the Lot.

2.2. Limited Common Areas. The Limited Common Areas with respect to a particular Lot shall consist of those doorsteps and front porches which are located outside the designated boundaries of such Lot but are adjacent and contiguous to such Lot and the improvements thereon, and which serve such Lot, and each such area shall be appurtenant to the Lots having such direct access thereto. The Limited Common Areas shall not be construed or interpreted to be separate and apart from the Common Area in general, being limited only with respect to the exclusive reserved use to the Lot served thereby.

2.3. Owner's Easement of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area (including, without limitation, the right of vehicular and pedestrian access, ingress, and egress to and from his Lot over those portions of the Common Area from time to time designated for such purposes), which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the right of Owners and their respective families, tenants,

guests, and invitees to the exclusive use and enjoyment of Limited Common Areas which are appurtenant to their respective Lots, and the matters set forth in Section 2.4 hereof.

2.4. Rights of the Association. The rights and privileges conferred in Section 2.3 hereof shall be subject to the right and, where applicable, the obligation of the Association acting through the Board to:

(a) promulgate rules and regulations relating to the use, operation, and maintenance of the Common Area, including, but not limited to, provisions for the imposition and assessment of fines for violation of any such rules or regulations;

(b) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of the Common Area, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the Association's property including the Common Area and revenues from assessments, user fees, and other sources; and provided, however, that the Association shall not deed, grant, or convey to anyone any mortgage, deed to secure debt or other security interest on or in Common Area constituting real estate without approval by a two-thirds (2/3) vote of the Members of the Association (excluding the Declarant) and by the Declarant during the period when the Declarant has the right to appoint members of the Board;

(c) grant easements or rights-of-way over Common Area to any municipality or other governmental body, agency or authority, to any quasi-public agency, or to any utility company, broadband provider, or cable television system;

(d) dedicate or transfer all or any part of the Common Area or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a two-thirds (2/3) vote of the Members of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

(e) suspend, pursuant to Section 3.5, the voting rights of any Member and the rights of enjoyment granted or permitted by Section 2.3; provided that no such suspension shall prevent an Owner's ingress to or egress from his Lot;

(f) modify the boundary lines between Common Area and adjoining Lots or streets;

(g) sell, lease or otherwise convey all or any part of its properties and interests therein; provided, however, that, except for modifications to the boundary lines between Common Area and adjoining Lots or streets, the Association shall not convey all or any part of the Common Area without the approval by a two-thirds (2/3) vote of the Members of the Association;

(h) enter into and enforce all applicable provisions of valid agreements of the Association;

(i) maintain and keep in good repair the Common Area to the extent that such Common Area is not otherwise maintained by the applicable governmental authority; and

(j) employ, retain, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the Association, the Board, and the officers of the Association.

2.5. Conveyance of Common Area by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Area to be maintained by the Association for the benefit of all of its Members.

2.6. Types of Common Area. At the time of the conveyance of any real property or grant of any easement by the Declarant to the Association to be used as Common Area, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Area, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not be used for any different purpose or purposes without the prior written consent of a two-thirds (2/3) vote of the Members of the Association (excluding the Declarant) and of the Declarant during the period when the Declarant has the right to appoint members of the Board.

2.7. Delegation of Use. Any Owner may delegate to the members of his family or his tenants who reside on a Lot, in accordance with the By-Laws, his right to use and enjoy the Common Area.

2.8. Association's Responsibility.

(a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Area, including the Limited Common Area. The Association's responsibilities with respect to the Common Area shall be deemed to include the maintenance, repair, and replacement of (i) all roads, walks, parking areas, detention facilities, and buildings and other improvements situated within the Common Area (including the Limited Common Areas), (ii) such utility lines, pipes, plumbing, wires, conduits, and systems which are a part of the Common Area (including the Limited Common Areas), and (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon the Common Area and upon the Lots (except for landscaping installed by an Owner, and areas on which the Owner's or Occupant's dog regularly leaves its droppings, unless the Owner thereof immediately removes same). In addition to the maintenance and repair of the Common Areas and other areas as described herein, the Association shall also be responsible for providing only the following exterior maintenance to all Townhouses and garages and the Limited Common Areas appurtenant thereto: paint exterior surfaces of windows, window frames, doors, and door frames during Development-wide painting projects only at such times as shall be determined by the Board, repair front stoops and stairs, and periodically replace all roofs. The Association shall not be responsible for repairing roof leaks or replacing rotted wood, which shall be the responsibility of each Owner.

(b) The Association shall not be liable for injury or damage to any person or property (i) caused by the elements or by any Owner or any other person, (ii) resulting from any rain, snow, or ice which may leak or flow from any portion of the Common Area, or (iii) caused by any pipe, plumbing, drain, conduit, appliance, equipment, 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 for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Area, including the Limited Common Areas.

(c) No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or any order or directive of

any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

2.9. Services to Other Property. The Association shall have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Development, and to enter into easements and agreements to share costs regarding such property where the Board has determined that this would benefit the Owners.

### **ARTICLE 3. VILLAGE TOWNHOMES AT AVIGNON HOMEOWNERS ASSOCIATION**

3.1. Purpose, Powers, and Duties of the Association. The Association has been formed as a non-profit civic organization for the sole purpose of performing certain functions for the common good and general welfare of the people of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the people of the Development. To the extent, and only to the extent, necessary to carry out such purpose, and subject to any limitations contained in this Declaration, the Association (a) shall have all of the powers of a corporation organized under the Georgia Non-Profit Corporation Code and (b) shall have the power and duty to exercise all of the rights, powers, and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

3.2. Membership in the Association. Every Owner shall automatically be a Member of the Association and such membership shall terminate only as provided in this Declaration. For purposes of voting, there shall be two (2) classes of Members as set forth in Section 3.3.

#### 3.3. Voting Rights.

(a) Each Owner of a Lot, with the exception of Declarant, shall be a Class A Member and shall be entitled to one (1) Class A vote per Lot owned by such Owner. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association.

(b) The Declarant shall be the sole Class B Member and shall be entitled to ten (10) votes for each Lot owned; provided, however, in no event shall the Class B Member have less than the total number of Class A votes plus one (1). The Class B Membership shall cease and be converted to Class A Membership at such time as Declarant no longer retains the right to appoint and remove members of the Board and officers of the Association pursuant to Section 3.8 below.

(c) The Development may be composed of Lots to be developed in phases containing unequal numbers of Lots. Each such phase will be platted of record in the Office of the Clerk of the Superior Court of Cobb County. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the annexation of additional real property composed of Lots pursuant to Article 10 of this Declaration, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added and in accordance with the formula set forth in this Section 3.3; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development.

3.4. Board of Directors. The affairs of the Association shall be managed by the Board. The number of directors and the method of election of directors shall be as set forth in the By-Laws of the Association.

3.5. Suspension of Membership. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Area of any person who:

(a) shall be subject to the Right of Abatement, as defined in Section 8.2, by reason of having failed to take reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC (as herein defined) within ten (10) days after having received notice of the same pursuant to the provisions of Sections 5.12, 6.11, or 8.2 hereof;

(b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article 4 hereof; or

(c) shall be in violation of any of the rules or regulations of the Association relating to the use, operation, or maintenance of Common Area.

Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in Subsection (c) of this Section 3.5, the suspension may be for a period not to exceed sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

3.6. Termination of Membership. Membership shall cease only when a person ceases to be an Owner.

3.7. Voting Procedures. The procedures for the election of directors of the Association and the resolution of such other issues as may be brought before the Membership of the Association shall be governed by this Declaration, the Georgia Non-Profit Corporation Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, a copy of which is attached hereto as Exhibit "B," as each shall from time to time be in force and effect.

3.8. Control by Declarant.

(a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, Declarant hereby retains the right to appoint and remove all members of the Board of the Association, and all officers of the Association until the first of the following events shall occur: (i) the expiration of ten (10) years after the date of the recording of this Declaration; (ii) the date upon which all of the Residences submitted or to be submitted to this Declaration have been conveyed to Owners other than a person or persons constituting Declarant; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant.

(b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. At such special meeting, the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

3.9. 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 Development, 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 Development, entitled to cast all votes attributable to the Development 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 Development pursuant to the Master Declaration.

#### **ARTICLE 4. ASSESSMENTS**

4.1. Covenants for Assessments and Creation of Lien and Personal Obligation. Each Owner of a Residence, jointly and severally, for himself, his heirs, devisees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

(a) to pay to the Association the annual assessments, any applicable Parcel assessments, and any specific assessments which may or shall be levied by the Association pursuant to this Declaration against all Residences owned by such Owner;

(b) to pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Residences owned by such Owner;

(c) that there is hereby created a continuing charge and lien upon all Residences owned by such Owner against which all such assessments are made to secure payment of such assessments, and any interest thereon as provided in Section 4.9 hereof, and costs of collection, including reasonable attorneys' fees;

(d) that such continuing charge and lien on such Residence binds such Residence in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns; such charge and lien is superior to any and all charges, liens, and encumbrances which may hereafter in any manner arise or be imposed upon such Lots, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) any first mortgage on a Lot or Lots (a "First Mortgage"); such continuing charge and lien shall not be affected by any sale or transfer of a Lot, except that a sale or transfer of a Lot pursuant to a foreclosure of a First Mortgage shall extinguish such continuing charge and lien with respect to amounts owed as of the date of foreclosure;

(e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Residence from liability for any assessment thereafter assessed; and

(f) that all annual, special, Parcel, and specific assessments (together with interest thereon as provided in Section 4.9 hereof and costs of collection, including reasonable attorneys' fees) levied against any Residence owned by such Owner during the period that such Owner is an Owner shall be (in addition to being a continuing charge and lien against such Residence as provided in Section 4.1(c) hereof) a personal obligation which will survive any sale or transfer of the Residence owned by such Owner; and that the grantee in a conveyance of a Lot shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee; provided, however, that if the grantee shall obtain a certificate as provided in Section 4.10 hereof, such grantee and his or

her successors, successors-in-title, and assigns shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments against such grantor in excess of any amount set forth in the certificate.

4.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the Development, including, but not limited to, the acquisition, construction, improvement, maintenance, and equipping of the Common Area, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association, and the payment of all principal and interest when due on all debts owed by the Association.

4.3. Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the annual assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purpose.

4.4. Annual Assessment.

(a) Beginning on the Commencement Date, each Residence shall be subject to a maximum annual assessment of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_) per year, as may be adjusted after December 31, 2007, pursuant to Sections 4.4(b) and (c) below. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Owner of a Residence pays an annual assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year, and the "First Assessment Year" shall be the year 2007.

Annual assessments shall be levied in such manner and on such dates as may be fixed by the Board of Directors. Unless otherwise provided by the Board, the annual assessments shall be paid in monthly installments.

(b) Commencing with the First Assessment Year and continuing thereafter, without a vote of the Membership, the maximum annual assessment may be increased at any time and from time to time during each Assessment Year by a maximum percentage which is equal to the greater of (i) ten percent (10%), or (ii) the percentage increase, if any, in the Consumer Price Index for all urban consumers (the "CPI") as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the United States, All Items (1982-84=100), for the monthly period ending on the 31st day of the month of October which immediately precedes each Assessment Year over the CPI for the monthly period ending on the 31st day of the month of October one year earlier. If such Consumer Price Index should cease to be published, the Association shall use the most comparable governmental index published in lieu thereof.

(c) Commencing with the First Assessment Year and continuing thereafter, the maximum annual assessment for each Assessment Year may, at any time and from time to time, be increased by more than the amount permitted in Section 4.4(b) if such increase is approved by a two-thirds (2/3) vote of the Members of the Association.

(d) Capital Contribution. In addition to the annual assessment provided in Sections 4.4(a), (b), and (c) above, at the closing of the initial sale of each Residence to a party other than the builder thereof, and at each and every subsequent resale of each Residence, the purchaser thereof shall pay to the Association an amount equal to one-sixth (1/6th) of the annual assessment in effect at the time as an initial working capital contribution (the "Capital Contribution"). This Capital

Contribution is in addition to, and not in lieu of, the annual assessment, and shall not be considered an advance payment of the annual assessment.

4.5. Special and Parcel Assessments.

(a) In addition to the annual assessment authorized by this Article 4, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair, or replacement of a capital improvement on the Common Area. Such special assessments may be levied by the Board in any Assessment Year without the approval of the Members, if such special assessments in the aggregate do not exceed an amount equal to one-half of the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of a two-thirds (2/3) vote of the Members of the Association.

(b) The Association shall also be authorized to levy, in any Assessment Year and with such frequency as the Association shall deem necessary, Parcel assessments for the purpose of paying, in whole or in part, the costs of estimated expenses for the sole benefit of a particular Parcel, which Parcel assessments shall be allocated equally among the Residences in a Parcel.

4.6. Assessment Procedure.

(a) The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of the maximum annual assessment as determined by the provisions of this Article 4. The annual assessment shall be due and payable on January 1 of each year (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repairs and replacements of the Common Area; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all future repairs and replacements of the Common Area, it being intended that a portion of the costs will be covered by special assessments. The Board shall cause the Association to send to each Owner at least fifteen (15) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on the fifteenth (15th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in monthly, quarterly, or semi-annual installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements which may be levied in accordance with the provisions of this Article 4.

(b) All Members of the Association shall be given written notice by the Board not less than fifteen (15) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 4.4(c) or Section 4.5 of this Article 4. Such written notice shall specify under which Section or Sections the Board will propose action.

4.7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Residences.

4.8. Contribution by Declarant. For so long as Declarant has the authority to appoint and remove directors and officers of the Association, Declarant shall not be liable for the payment of any assessments. Provided, however, during said period Declarant shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association, and the sum of annual, special, Parcel, and specific assessments collected by the Association in any Assessment Year, and such advances shall be deemed to be loans to the Association and shall be evidenced by



promissory notes from the Association to Declarant, which shall be due and payable upon demand, with interest at the rate of ten percent (10%) per annum after demand.

4.9. Effect of Non-Payment of Assessments. Any assessment which is not paid on or before the date on which payment is due shall bear interest thereafter at the lower of the highest legal rate of interest which can be charged, or the rate of ten percent (10%) percent per annum, or such rate as the Board may from time to time establish; provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment on or before the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with a late or delinquency charge not in excess of the greater of Ten and No/100 (\$10.00) Dollars or ten percent (10%) of the amount of the unpaid portion and interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration.

4.10. Certificate of Payment. Upon written demand by an Owner, the Association shall, within a reasonable period of time, issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association or its agent may charge a fee not exceeding Twenty-Five and No/100 Dollars (\$25.00) as a prerequisite to the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

4.11. Approval by Declarant. Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the approval of Declarant for so long as Declarant has the right to appoint and remove officers and directors of the Association.

4.12. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board, and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including any expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association, as provided herein:

- (a) expenses of the Association which benefit less than all of the Residences, which may be specifically assessed equitably among all of the Residences which are benefited according to the benefit received;
- (b) expenses incurred by the Association pursuant to Section 6.11 hereof;
- (c) expenses incurred by the Association pursuant to Section 11.8(d) hereof;
- (d) reasonable fines as may be imposed in accordance with the terms of this Declaration and the By-Laws; and

(e) the deductible for any casualty insurance policy carried by the Association, which shall, in the event of damage or destruction, be charged to and allocated among the persons who are responsible for maintenance or repair of the damaged or destroyed property.

4.13. 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.

## **ARTICLE 5. ARCHITECTURAL CONTROL**

### **5.1. Architectural Control Committee – Creation and Composition.**

(a) An Architectural Control Committee (the "ACC") shall be established consisting of not less than three (3) or more than five (5) individuals. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to appoint all members of the ACC until all of the Residences on all of the Lots in the Development have been sold to homeowners. Thereafter, the Board shall appoint the members of the ACC. All costs of operating the ACC, may, at the discretion of Declarant, be borne by the Association.

(b) Each initial member of the ACC shall be appointed for a term expiring on December 31, 2008. Thereafter, each member of the ACC shall be appointed for a calendar-year term. If any vacancy shall occur in the membership of the ACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall, subject to the provisions of Section 5.1(a), be filled by the Declarant (or the Board if at the time the Board has the right to appoint members of the ACC) at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC, and such resignation shall take effect on receipt thereof by the Chairman. Any member of the ACC may be removed at any time with or without cause by the Declarant while the Declarant has power to appoint members of the ACC pursuant to the provisions of Section 5.1(a) hereof (or by the Board if at the time the Board has the right to appoint members of the ACC).

5.2. Purpose, Powers, and Duties of the ACC. The purpose of the ACC is to assure that any installation, construction, or alteration of any Structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction, or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation, and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power to approve or disapprove plans and specifications for any installation, construction, or alteration of any Structure on any Lot.

5.3. Officers, Subcommittees, and Compensation. The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine to be necessary. The members of the ACC shall be reimbursed by the Association for travelling expenses and other reasonable out-of-pocket costs incurred in the performance of their duties as members of the ACC.

#### 5.4. Operations of the ACC.

(a) Meetings. The ACC shall hold meetings as necessary. Special meetings may be called by the Chairman at any time, and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The ACC shall maintain both a record of votes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary of the Association. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ACC.

#### (b) Activities.

(i) The ACC shall adopt and promulgate the Design Standards described in Section 5.5 hereof and shall, as required, make findings, determinations, rulings, and orders with respect to the conformity with said Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration.

(ii) Any two (2) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, except with respect to the adoption or promulgation of the Design Standards. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization; subject, however, to review and modification by the ACC on its own motion or to appeal by the applicant to the ACC as provided in this paragraph (ii). Written notice of the decision of such two (2) or more members shall, within five (5) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no event later than twenty-one (21) days after the filing of such request. The decision of a majority of the members of the ACC with

respect to such matter shall be final and binding, but may be appealed to the Board pursuant to Section 5.10 hereof.

5.5. Design Standards.

(a) The ACC shall from time to time adopt, promulgate, amend, revoke, and enforce guidelines (the "Design Standards") for the purposes of:

(i) governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;

(ii) governing the procedure for such submission of plans and specifications;

(iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures, and all other matters that require approval by the ACC pursuant to this Declaration; and

(iv) assuring the conformity and harmony of external design and general quality of the Development.

(b) The ACC shall make a published copy of its current Design Standards readily available to Owners and prospective Owners and to all applicants seeking the ACC's approval.

5.6. Submission of Plans and Specifications. Except for (i) Structures erected, placed, or moved onto any Lot by the Declarant or any affiliate or designee of the Declarant, and (ii) alterations to such Structures by the Declarant or any affiliate or designee of the Declarant, no Structure shall be commenced, erected, placed, moved onto, or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC in the Design Standards, including, without being limited to:

(a) a site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open spaces, easements, and driveways;

(b) a foundation plan;

(c) exterior elevations of all proposed Structures and alterations to existing Structures;

(d) specifications of materials, color scheme, and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures; and

(e) certifications from a structural engineer or other professional or professionals acceptable to the ACC concerning matters related to the proposed alterations, including, but not limited to structural and hydrological issues.

5.7. Approval of Plans and Specifications. Upon approval by the ACC of any plans and specifications submitted pursuant to this Declaration, one (1) copy of such plans and specifications, as approved, shall be deposited for permanent record with the ACC, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure, and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and all conditions attached to any such approval.

5.8. Disapproval of Plans and Specifications. The ACC shall have the right in its sole discretion to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following:

- (a) the failure to include information in such plans and specifications as may have been reasonably requested;
- (b) the failure of such plans or specifications to comply with this Declaration or the Design Standards; or
- (c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards for the Development as set forth in the Design Standards or the Development-Wide Standard, or (ii) as to location, to be incompatible with topography, finished ground elevation, or surrounding Structures. In any case in which the ACC shall disapprove any plans or specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

5.9. Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within twenty-one (21) days after receipt thereof. Failure by the ACC to take action within twenty-one (21) days after receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

5.10. Appeal of ACC Decision. In the event the ACC disapproves any plans and specifications submitted pursuant to this Declaration or grants approval of any plans and specifications subject to any conditions which are not acceptable to the applicant, the applicant may appeal such decision of the ACC to the Board pursuant to the following procedures:

- (a) Within ten (10) days after receipt of the ACC's decision, the applicant shall give written notice of the applicant's appeal to the Board. The notice shall:
  - (i) Contain a complete copy of the applicant's original application to the ACC and any supplemental material provided to the ACC by the applicant; and
  - (ii) Include a fee (payable to the Association) in the amount of One Hundred Fifty and No/100 (\$150.00) Dollars.
- (b) Approval by the Board, if granted, together with any conditions imposed by the Board, shall be placed in writing on the plans and specifications and shall be returned to the applicant.

(c) Approval by the Board shall constitute the approval of the ACC for all purposes under this Declaration.

(d) Failure by the Board to take action within thirty (30) days after receipt of the complete notice of appeal shall be deemed approval of such plans and specifications.

5.11. Inspection Rights. Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times, enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration, or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

5.12. Violations. If any Structure shall be erected, placed, maintained, or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association, and the Board shall take appropriate measures to correct the violation; the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within ten (10) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.2 hereof.

5.13. Certification of Compliance.

(a) Upon completion of the installation, construction, or alteration of any Structure in accordance with plans and specifications approved by the ACC, the ACC shall, upon written request of the Owner thereof or upon the ACC's own initiative, issue a Certificate of Compliance, identifying such Structure and the Lot upon which such Structure is placed, and stating that the plans and specifications have been approved and that such Structure, as built, is acceptable to the ACC. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ACC.

(b) Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated; and as to any purchaser or lender in good faith and for value, or as to any title insurer, such Certificate shall be conclusive evidence that all Structures on the Lot comply with all of the requirements of this Article; provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency, or approval by the ACC of the actual construction or workmanship of Structures, or to represent or warrant to anyone the quality, function, or operation of the Structures or of any construction, workmanship, engineering, materials, or equipment.

The issuance of the Certificate shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule, regulation, or building code, or in accordance with every detail on the approved plans and specifications.

5.14. Fees. Subject to the approval of the Board as to the amount, the ACC may impose and collect a reasonable and appropriate fee to cover the cost of review of plans and specifications and of inspections performed pursuant to Section 5.11 hereof. The fee shall be established from time to time by the ACC and published in the Design Standards.

5.15. Non-Discrimination by ACC. The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age, or national origin. Further, the ACC, in the exercise of its powers granted pursuant to this Declaration, shall not take any action, the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age, or national origin.

5.16. Disclaimer as to ACC Approval. Plans and specifications are not reviewed for engineering, structural design, structural integrity, quality of materials, or compliance with any local, state, or federal laws, including local building codes and zoning ordinances, and by approving such plans and specifications neither the ACC, the members thereof, the Board, the Association, nor the Declarant, assumes liability or responsibility therefor, nor for any defect in any Structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, 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 non-feasance 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 he will not bring any action or suit against Declarant, the Association, the ACC, the Board, or the officers, directors, members, employees, and agents of any of them, to recover any such damages and hereby releases, remises, quitclaims, and covenants not to sue all such persons and entities for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or non-feasance, 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.

## **ARTICLE 6. GENERAL COVENANTS AND RESTRICTIONS**

6.1. Application. The covenants and restrictions contained in this Article 6 shall pertain and apply to all Lots and to all Structures erected or placed thereon.

6.2. Restriction of Use. Except as provided in Sections 6.3 and 10.3, Lots may be used for single-family residences only and for no other purpose. The maximum number of individuals who may reside in a Townhouse shall be equal to two (2) multiplied by the number of bedrooms in the Townhouse.

6.3. Business Use. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant of a Residence may conduct such business activities within the Residence so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Lot; (ii) the business activity conforms to all zoning requirements for the Development; and (iii) the business activity does not constitute a nuisance or a hazardous or offensive use, as may be determined in the sole discretion, of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted, meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family, and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Leasing of the Structure on the Lot shall not be considered a business activity violative of this Section.

6.4. Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division, or subdivision. Notwithstanding the foregoing, nothing herein shall prevent Declarant or the Owners of any Lots from combining all or any portion of two or more Lots into one Lot for

construction of a single Residence thereon; provided, however, that the Owner of the Residence on such Lot shall be responsible for annual, Parcel, specific, and special assessments based upon the number of single-family residences constructed on the combined Lots. Notwithstanding anything contained herein to the contrary, the Declarant reserves the right to re-plat any Lot in order to modify the boundary lines and to take such other steps reasonably necessary or desirable to make such re-platted Lot suitable and fit as a building site, or to conform the boundary lines of the Lot to the boundary lines of the Townhouse constructed thereon, including, but not limited to, the relocation of easements, walkways, rights-of-way, roads, bridges, parks, recreational facilities, and other amenities to conform to the new boundaries of such re-platted Lots.

6.5. Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape, and required landscaping as provided for in Section 6.6. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the ACC.

6.6. Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. No installation or alteration of any landscaping shall take place without the prior written approval of the ACC of plans and specifications therefor. No yard art, including, but not limited to, concrete lawn jockeys, animals, and birdbaths, and plastic animals, shrubs, bushes, and flowers, shall be placed temporarily or permanently, in the front or side yards of any Lot. Guidelines for the landscaping and mailboxes to accompany the construction or alteration of any Structure may be included in the Design Standards of the ACC. Notwithstanding anything contained herein to the contrary, the Board shall be entitled to establish reasonable rules and regulations limiting the types and extent of holiday decorations and the maximum length of time holiday decorations may be placed outside of Townhomes before and after holidays.

6.7. Signs and Flags.

(a) No signs whatsoever (including, but not limited to, commercial and similar signs) shall, without the ACC's prior written approval of plans and specifications therefor, be installed, altered, or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof; except:

(i) such signs as may be required by legal proceedings and for display of all building permits;

(ii) not more than one "For Sale" or "For Rent" sign, such sign being a maximum face area of four (4) square feet; provided that such sign may only be displayed in the front of a Lot; and provided that if, at the time of any desired use of such sign, the Association is making "For Sale" or "For Rent" signs available for the use of Owners, the signs made available by the Association must be used; and provided, further, that if the Association has installed a common sign for all sale and rental materials, no "For Sale" or "For Rent" signs may be allowed on any Lot or on any portion of a Structure.

(iii) not more than two lot identification signs in accordance with plans and specifications approved by the ACC;

(iv) not more than two (2) signs, having no more than one (1) square foot of face area each, indicating that the Structure is protected by a security system;



(v) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC; and

(vi) signs permitted pursuant to Section 10.3 hereof.

(b) In no event during approved construction of any Structure shall more than one job identification sign be approved by the ACC.

(c) No flags whatsoever shall be installed, altered, or maintained on any Lot except for one American Flag no larger than 3 feet by 5 feet on a flagpole attached to the Townhouse.

6.8. Fences and Walls. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. Except for chain-link fences, if any, installed by Declarant, no chain-link fences shall be erected or maintained on any Lot. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the ACC.

6.9. Antennas; Aerials; Satellite Dishes. No exterior antenna, aerial, satellite dish, or other reception device shall be constructed or installed on any Structure located on any Lot or be placed on or affixed to any other portion of any Lot; provided, however, and notwithstanding the foregoing, the Owner of each Lot shall have the right to install, maintain, and use on such Lot an antenna, aerial, or satellite dish that is designed to receive television broadcast signals, all equipment necessary or desirable for a broadband communications delivery system to serve the Residences in the Development and other property, and an antenna, aerial, or satellite dish that is no larger than one meter in diameter that is designed to receive direct broadcast satellite service or video programming services via multipoint distribution services, provided that such antenna, aerial, or satellite dish is positioned on that location on the Lot which affords the reception of the best quality signal while being the least visible from any other Lot as approved by the ACC.

6.10. Clotheslines, Equipment and Woodpiles. No clotheslines of any kind shall be placed temporarily or permanently outside of any Townhouse. All equipment, woodpiles, and solar equipment shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring Residences and streets or as may otherwise be approved by the ACC.

6.11. Maintenance.

(a) Unless specifically identified herein as being the responsibility of the Association in Section 2.8 hereof, all maintenance and repair of a Lot, together with all portions of the Townhouse, garage, and other Improvements thereon, shall be the responsibility of the Owner of such Lot. The responsibility of each Owner shall include the maintenance, repair, and replacement of all fixtures, equipment, and appliances (including, without limitation, the heating and air-conditioning system for his Townhouse) and all chutes, flues, ducts, conduits, wires, pipes, plumbing, or other apparatus which are deemed to be a part of his Lot. The responsibility of the Owner shall also include the maintenance, repair, and replacement of all glass, screens and screening, awnings, window boxes, and lights and light fixtures (exterior and interior), windows, window frames, window hardware, window locks, garage doors (including tracks, motors and openers), doors, door frames, door hardware, and door locks, and all screens or glass enclosing porches, balconies, or decks which are a part of the Lot or of the Limited Common Areas appurtenant thereto. Each Owner shall also be responsible for maintaining all Limited Common Areas appurtenant to his Lot in a neat, clean, and sanitary condition.

(b) Each Owner shall promptly report to the Association or its agent any defect or need for repairs, the responsibility for the remedying of which is that of the Association.

(c) As provided in Section 2.8 hereof, each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, or cleaning any item which is the responsibility of the Owner, but which responsibility such Owner fails or refuses to discharge.

(d) No Owner shall (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of his Townhouse or garage unless such decoration, change, or alteration is first approved, in writing, by the Board or the ACC as provided in Article 5 hereof, (ii) do any work which, in the reasonable opinion of the Board or the ACC, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the Board or the ACC, or (iii) fail to remove all holiday decorations within seven (7) days after each holiday (or such earlier or later date established from time to time by the Board).

(e) If, in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within ten (10) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 8.2 hereof.

(f) Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

6.12. Parking and Maintenance of Vehicles. Vehicles owned or used by Owners or Occupants of a Residence shall be parked only in the garage in the Residence; provided, however, that if the Owner or Occupant of a Residence owns or uses more vehicles than there are garage spaces in the Residence, the excess vehicle or vehicles may be parked only on the driveway serving the Residence, and not on the streets of the Development; provided, further, however, that no vehicle shall be parked so as to block or otherwise impede access to another Owner's garage. All vehicles parked outside of a garage must be properly licensed and in working order, and no vehicle maintenance may be conducted outside of a garage.

6.13. Commercial and Recreational Vehicles and Trailers. In addition to the restrictions of Section 6.12, no commercial vehicle (other than passenger vehicles having a capacity of less than nine (9) passengers), house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat, boat trailer, open trailer, enclosed trailer, or like equipment shall be permitted on any Lot or on the Common Area of the Development on a permanent basis, but shall be allowed on a temporary basis not to exceed twenty-four (24) consecutive hours; provided, however, that the Association may waive strict enforcement of this restriction for good cause on a case-by-case basis. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in a garage and is concealed from view from neighboring Residences and streets.

6.14. Recreational Equipment. No recreational or playground equipment shall be placed or installed upon any Lot or on any portion of the Common Area, except as approved by the ACC.

6.15. Non-Discrimination. No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of, any Lot to any person because of race, color, sex, religion, age, or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

6.16. Animals. No agricultural animals may be kept on any Lot, and no animals, including birds, insects, and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise or become a nuisance. No Structure for the care, housing, or confinement of any animal shall be constructed, placed, or altered on any Lot or on any portion of the Common Area. No animal shall be allowed outdoors unless it is being walked on a leash. No animal shall be permitted to leave its droppings on any portion of the Development, and the Owner of such animal shall immediately remove said droppings.

6.17. Solid Waste, Garbage Cans, and Trash Cans.

(a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on the Common Area.

(b) Except during approved construction, as approved by the appropriate governmental authority, and pursuant to such conditions as shall be specified by the ACC, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on the Common Area.

(c) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials, or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standards.

(d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pickup is to be made in order to provide access to persons making such pickup. At all other times such containers shall be screened or enclosed in a manner set forth in the Design Standards. Guidelines relating to the type of containers permitted, the manner of storage, and the place of pickup may also be included in the Design Standards. The Association may, in its discretion, engage a private garbage collection company to service all Lots, the cost of which shall be included in the Annual Assessments.

6.18. Nuisances. No noxious or offensive activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to anyone in the Development.

6.19. Party Walls and Party Fences.

(a) General Rules of Law to Apply. Each wall built as a part of the original construction of Townhouse which shall serve and separate any two adjoining Townhouses, and each privacy wall or fence which is located outside a Townhouse but is adjacent and contiguous to a Townhouse shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

(c) Damage and Destruction. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and the other Owner or Owners shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the

right of any such Owners to call for a larger contribution from others under any rule of law regarding liability for negligent or willful acts or omissions.

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

(e) Use of Party Wall. Each Owner shall have the right to use the party wall or fence jointly with the other Owner of the immediately adjoining Lot for the purposes of support and enclosure, including, but not limited to, the insertion of beams or otherwise; provided, however, that such use shall be subject to the provisions of Article 5 of this Declaration and the Design Standards, shall not injure the adjoining Structure, and shall not impair the party wall benefits, enjoyment, and support to which the adjoining Structure is entitled.

(f) Arbitration. In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each Owner shall appoint one arbitrator. Should any Owner refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board, the Board shall appoint an arbitrator for the refusing Owner. The arbitrators thus appointed shall appoint one additional arbitrator and the decision by a majority of all three arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either Owner may have against the other. Each Owner shall pay the costs of his arbitrator and one-half of the costs of the third arbitrator.

6.20. Leases. In order to preserve the character of the Development as predominantly owner-occupied, and to comply with the eligibility requirements for financing in the secondary mortgage market, leasing of Residences shall be governed by the restrictions imposed by this Section. Except as provided herein, the leasing of Residences shall be prohibited.

(a) General. Owners desiring to lease their Residences may do so only if they have applied for and received from the Board either a "leasing permit" or a "hardship leasing permit." Such a permit, upon its issuance, will allow an Owner to lease his or her Residence provided that such leasing is in strict accordance with the terms of the permit and this Section. The Board shall have the authority to establish conditions as to the duration and use of such permits consistent with this Section. All leasing permits and hardship leasing permits shall be valid only as to a specific Owner and Residence, and shall not be transferable between either Residences or Owners (including a subsequent Owner of a Residence where a permit was issued to the Owner's predecessor in title).

(b) Leasing Permits. An Owner's request for a leasing permit shall be approved only if current, outstanding leasing permits have not been issued for more than ten percent (10%) of the total Residences (excluding Residences owned by the Declarant) and the Owner complies with all of the other provisions of this Section. A leasing permit shall be automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Residence to a third party (excluding sales or transfers to (a) an Owner's spouse, (b) a person cohabitating with the Owner, and (c) a corporation, partnership, company, or legal entity in which the Owner is a principal); (2) the failure of an Owner to lease his or her Residence within ninety (90) days of the leasing permit having been issued; or (3) the failure of an Owner to have his or her Residence leased for any consecutive ninety (90) day period thereafter. If current leasing permits have been issued for more than ten percent (10%) of the total Residences (excluding Residences owned by the Declarant), no additional leasing permits shall be issued (except for hardship leasing permits) until the number of outstanding current leasing permits falls below ten percent (10%) of the total Residences (excluding Residences owned by the Declarant) in the Development. Owners who have been denied a leasing permit shall automatically be placed on a waiting list for a leasing permit and shall be issued the same if they so desire when the number of current outstanding leasing permits issued falls to ten percent (10%) or less of the total Residences (excluding

Residences owned by the Declarant) in the Development. The issuance of a hardship leasing permit to an Owner shall not cause the Owner to be removed from the waiting list for a leasing permit.

(c) Hardship Leasing Permits. If the failure to lease will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Board for a hardship leasing permit. The Board shall have the authority to issue or deny requests for hardship leasing permits in its discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship, (2) the harm, if any, which may result to the Development if the permit is approved, (3) the number of hardship leasing permits which have been issued to other Owners, (4) the Owner's ability to cure the hardship, and (5) whether previous hardship leasing permits have been issued to the Owner. A "hardship" as described herein shall include, but not be limited to the following situations: (1) an Owner must relocate his or her residence outside the Atlanta metropolitan area and cannot, within six (6) months from the date that the Residence was placed on the market, sell the Residence except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner dies and the Residence 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 Residence. Hardship leasing permits shall be valid for a term not to exceed one (1) year. Owners may apply for additional hardship leasing permits. Hardship leasing permits shall be automatically revoked if, during the term of the permit, the Owner is approved for and receives a leasing permit.

(d) Leasing Provisions. Leasing which is authorized, pursuant to permit hereunder, shall be governed by the following provisions:

(i) Notice. At least seven (7) days prior to entering into the lease of a Residence, 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 into compliance with the Declaration and any rules and regulations adopted pursuant thereto.

(ii) Damage Deposit. At the time the Owner provides the proposed lease agreement to the Board, the Owner shall deposit \$500.00 with the Association to be held in a non-interest bearing account as a damage deposit (the "Damage Deposit"). The Damage Deposit may be used by the Association from time to time to repair any damage to the Common Area caused by the lessee and for any leasing fines levied against the Owner. The Owner must restore the \$500.00 Damage Deposit each time any funds are withdrawn by the Association for said purposes. The balance of the Damage Deposit shall be returned to the Owner at the end of the lease term after the lessee has moved out of the Residence.

(iii) Document Review Fee. At the time the Owner provides the proposed lease agreement to the Board, the Owner shall pay \$250.00 to cover the costs of reviewing the proposed lease and related information (the "Document Review Fee"). The Document Review Fee is non-refundable and is due with respect to each new lessee. In addition, the Owner shall also pay \$50.00 to cover the costs of reviewing each proposed lease renewal or extension document.

(iv) Leasing Fines. There shall be a fine of \$25.00 per day for any violation by the lessee of any of the rules and regulations of the Association and a fine of \$25.00 per day if the Owner of a Residence enters into a lease in violation of the provisions of this Section, which fine shall continue until the lease agreement is delivered to and reviewed and approved by the Board.

(v) Assessments Current. The Board shall not be required to approve any lease agreement unless and until all assessments owed by the Owner with respect to the Residence have been paid in full.

(vi) No Vote. The lessee shall not be entitled to attend meetings of the Members of the Association or cast any vote on behalf of the Owner.

(vii) General. Residences may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. No lessee may sublease all or any portion of the Residence. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form which is deemed acceptable. There shall be no subleasing of Residences or assignment of leases. All leases must be for an initial term of not less than 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 Residence, the Owner shall provide the Board with a copy of the lease agreement and the name of the lessee and all other people occupying the Residence. The Owner must provide the lessee copies of this Declaration, the 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.

(viii) Liability for Assessments, Use of Common Areas, and Compliance with Declaration, Bylaws and Rules and Regulations. Each Owner covenants and agrees that any lease of a Residence 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 the existence of this covenant, and the lessee, by occupancy of the Residence, agrees to the applicability of this covenant and incorporation of the following language into the lease:

“(i) Compliance With Declaration, By-Laws, and Rules and Regulations. Lessee shall comply strictly with all provisions of the Declaration of Covenants, Restrictions, and Easements for Village Townhomes at Avignon (the “Declaration”), the By-Laws, and the rules and regulations adopted by Village Townhomes at Avignon Homeowners Association, Inc. (the “Association”), as any of the foregoing may be amended from time to time. Lessee shall control the conduct of his or her family and guests in order to assure compliance with the foregoing and shall indemnify and hold Lessor and the Association harmless for any such person's failure to comply. Lessee acknowledges that the violation by Lessor or any occupant or person living with Lessee of any provision of the Declaration, the By-Laws, or the rules and regulations adopted by the Association shall constitute a default under the lease.

“(ii) Enforcement. The Association may bring an action against Lessee to recover sums due for damages or injunctive relief or may impose any other sanction authorized by the Declaration and the By-Laws, as they may be amended from time to time, or available at law or in equity, including, but not limited to, all remedies available to a landlord upon breach or default of a lease agreement by the Lessee. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

“(iii) Liability for Assessments. Upon request by the Association, Lessee shall pay to the Association all unpaid assessments, as lawfully determined and made payable during and prior to the term of the lease and any other period of occupancy by Lessee; provided, 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 Association's request. All payments made to the Association shall reduce by the same amount Lessee's obligation to make monthly rental payments to Lessor under the lease, unless the lease provides that the Lessee shall make said payments in addition to the monthly rental payment. If Lessee fails to comply with the Association's request to pay assessments, Lessee shall pay to the Association all late or delinquent charges, fines, interest, and costs of collection, including, but not limited to, reasonable

attorneys' fees actually incurred, to the same extent Lessee would be required to make such payments to the Association if Lessee were the owner of the leased Residence during the term of the lease and any other period of occupancy by Lessee. Notwithstanding anything contained herein, the Association shall have the right, but not the obligation, to request such payments from Lessee.

"(iv) Subordination of Rights. Lessee's rights shall be subject to all rights of the Association and any bona fide mortgage or deed to secure debt which is now or may hereafter be placed upon the premises by Lessor.

"(v) Liability Insurance. Lessee shall obtain and continue in force during the term of this lease a policy of comprehensive public liability insurance insuring Lessor and Lessee against any liability arising out of the use, occupancy, or maintenance of the Residence and all areas appurtenant thereto. Such public liability policy shall have at least \$100,000.00 of coverage with respect to the injury to or death of any one person, \$300,000.00 with respect to any one occurrence of bodily injury or death, and \$100,000.00 with respect to property damage. The limit of any such insurance shall not limit the liability of the Lessee hereunder. A certificate evidencing such insurance shall be provided to the Association prior to lease approval.

"(vi) No Subleases. Lessee may not sublease all or any portion of the Residence."

(e) Attorneys' Fees and Costs. In the event the Association proceeds to evict the Lessee, any costs, including attorneys' fees and court costs, associated with the eviction shall be specially assessed against the Residence and the Owner thereof, such being deemed hereby as an expense which benefits the leased Residence and the Owner thereof.

(f) Violations by Lessee. Any Lessee charged with a violation of this Declaration, the By-Laws, or the rules and regulations adopted by the Association, is entitled to the same rights to which the Owner is entitled as provided in the By-Laws. Notwithstanding the existence of any lease, or the occupancy of a Residence by a tenant or Lessee, the Owner thereof shall remain liable for all of the Owner's obligations under this Declaration, including, but not limited to, the obligation to pay all assessments with respect to the Lot, and all damage caused by the tenant or Lessee.

(g) Applicability. Notwithstanding anything to the contrary herein contained, the provisions of this Section shall not apply to impair the right of any first Mortgagee to:

- (i) foreclose or take title to a Lot pursuant to remedies contained in any mortgage or deed to secure debt;
- (ii) take a deed in lieu of foreclosure; or
- (iii) sell, lease, or otherwise dispose of a Lot acquired by the mortgagee.

#### **ARTICLE 7. STRUCTURAL SUPPORT, ENCROACHMENTS, EASEMENTS, ZONING, AND OTHER RESTRICTIONS**

7.1. Structural Support. Every portion of the Common Area or of a Lot, Townhouse, garage, or any other improvement which contributes to the structural support of another portion of the Common Area or of another Lot, Townhouse, garage, or other improvement shall be burdened with an easement for structural support, and each Lot shall also have the right to lateral support which shall be appurtenant to and pass with title to such Lot. No Owner shall be permitted to demolish his Townhouse or garage except to the extent that such demolition may be required (i) as a result of condemnation or eminent domain proceedings, (ii) as a result of repairing or rebuilding such Townhouse or garage as provided in

Article 11 hereof when the same has been partially or totally destroyed, or (iii) when the Association decides not to rebuild or restore in the event of casualty or condemnation.

7.2. Encroachments. If any portion of the Common Area (including Limited Common Areas) encroaches upon any Lot, or if any Lot, Townhouse, garage, or other improvement encroaches upon any other Lot or upon any portion of the Common Area (including Limited Common Areas), as a result of construction, reconstruction, repair, renovation, restoration, shifting, settlement, or movement of any portion of the Development or any improvements therein, a valid easement for the encroachment and for the maintenance, repair, and replacement thereof shall exist for so long as the encroachment exists; such encroachments to include, without limitation, encroachments for roofs, eaves, attics, chimneys, shutters, window boxes, awnings, gutters and downspouts, lights and light fixtures, doorsteps, porches (screened, enclosed, or open), balconies, decks, patios, and any other structural improvements. In the event that any Townhouse, garage, or other structure shall be partially or totally damaged or destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then repaired or reconstructed, encroachments of portions of the Common Area (including Limited Common Areas) upon a Lot, or of any Lot, Townhouse, garage, or other improvement upon any other Lot or upon any portion of the Common Area (including Limited Common Areas), due to such repair or reconstruction, shall be permitted and valid easements for such encroachments and the maintenance, repair, and replacement thereof shall exist.

7.3. Easements for Declarant. During the period that Declarant owns any Lot primarily for the purpose of sale, Declarant, and its duly authorized representatives, agents, and employees, shall have a transferable right and easement on, over, through, under, and across the Common Area for the purpose of constructing Townhouses and garages on the Lots and making such other improvements to the Property as are contemplated by this Declaration, and for the purposes of installing, replacing, and maintaining all Townhouses, garages, and other improvements within the Development, as well as utilities serving the Property, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing.

7.4. Easements for Utilities. The Association, acting through the Board, has the power to grant and accept easements upon, over, under, and across all of the Common Area for ingress, egress, installing, replacing, repairing, and maintaining master television antenna systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and electrical, gas, telephone, cable television, broadband communications delivery systems, water, and sewer lines. The Board shall, upon written request, grant such easements as may be reasonably necessary or desirable for the improvement of any portion of the Property. By virtue of any such easement, it shall be expressly permissible for the providing utility company or other supplier or servicer to erect and maintain the necessary poles and other necessary equipment.

7.5. Easements for Association. There shall be a general right and easement for the benefit of the Association, its directors, officers, agents, and employees, including, but not limited to, any manager employed by the Association, to enter upon the Property or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner or occupant of the Lot, Townhouse, garage, or other Structure or improvement directly affected thereby.

7.6. Zoning and Private Restrictions. None of the covenants, restrictions, or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules, or regulations of any governmental body. In the event of any conflict between such laws, rules, or regulations and the covenants, restrictions, and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.



## ARTICLE 8. ENFORCEMENT

8.1. Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association, and (iii) each Owner, and such Owner's heirs, devisees, legal representatives, successors, and assigns.

8.2. Right of Abatement.

(a) Except where different notice provisions are provided in Sections 5.12 and 6.11, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach, and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within ten (10) days after the mailing of said written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in this Section and in Sections 5.12 and 6.11 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot (including Limited Common Areas) or Structure as to which a violation, breach, or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach, or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, and without being liable for any damage whatsoever resulting from the exercise of the Right of Abatement, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the costs thereof, including the costs of collection, including reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or ten percent (10%) per annum, to be a binding personal obligation of such Owner enforceable at law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.4 hereof. Such lien shall be superior to any and all charges, liens, or encumbrances which may in any manner arise or be imposed upon the Lot after such entry, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.1 hereof, and (iii) any First Mortgage on a Lot or Lots. Such lien shall not be affected by any sale or transfer of a Lot, except that a sale or transfer of a Lot pursuant to a foreclosure of a First Mortgage shall extinguish such lien with respect to amounts owed as of the date of foreclosure.

8.3. Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association, or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors, or assigns, by reason of a violation of, or failure to perform, any of the obligations provided by this Declaration; and, therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

8.4. Collection of Assessments and Enforcement of Lien.

(a) If any assessment, interest, cost, or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner or Owners personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot

or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost, or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost, or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: to sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Courthouse in Cobb County, Georgia, to the highest bidder for cash, after advertising the time, terms, and place of such Sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Cobb County, Georgia, are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and its assigns, the agent and attorney-in-fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or its assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, legal representatives, devisees, successors, and assigns of such Owner, and that the conveyance to be made by the Association or its assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or its assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost, and other charge due, together with all costs and expenses of sale and fifteen percent (15%) of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law, and any mortgagee of said Lot or Lots. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

(c) No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein by any means, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law or ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

8.5. No Waiver. The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective heirs, legal representatives, devisees, successors, and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach, or as to any violation or breach occurring prior or subsequent thereto, or as to the same violation or breach by the Owner of any other Lot.

#### **ARTICLE 9. DURATION AND AMENDMENT**

9.1. Duration. This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Cobb County, Georgia, after which time this Declaration and the Restrictions contained herein shall be automatically renewed for successive periods of twenty (20) years; provided, however, that after the end of the said twenty (20) year period and during any twenty (20) year renewal period (but only during such renewal period), this Declaration and the

Restrictions contained herein may be terminated by an instrument executed by the proper Association officers and recorded in the Office of the Clerk of the Superior Court of Cobb County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a two-thirds (2/3) vote of the Class A Members of the Association.

9.2. Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing, filed and recorded in the Deed Records of the Superior Court of Cobb County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Area as it is constituted from time to time, or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 9.2 shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees, if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 9.2, and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance with the provisions of any applicable governmental statute, rule, or regulation, or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on any Lot subject to this Declaration, or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

9.3. Amendments by Association. Amendments to this Declaration, other than those authorized by Section 9.2 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered, and shall be delivered to each Member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Members holding at least two thirds (2/3) of the total votes in the Association; provided, however, that (i) any amendment which materially and adversely affects the security, title and interest of any mortgagee must be approved by such mortgagee; and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant.

(c) The agreement of the required percentage of the Owners and, where required, the Declarant, and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President and either a Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the

required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

**ARTICLE 10.  
ANNEXATION, WITHDRAWAL, AND  
CONSTRUCTION AND SALE PERIOD**

10.1. Annexation of Property. Until January 1, 2020, any additional real property may be annexed to the Property by the Declarant without the consent of the Class A Members. Such annexation shall be accomplished by filing in the Office of the Clerk of the Superior Court of Cobb County an approved Site Plan describing the real property to be annexed to the Property and by including on such Site Plan a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration; or by filing an amendment to this Declaration which shall be executed by the Declarant and has been consented to by the owners of the real property to be annexed, if any portion of such real property is owned by someone other than Declarant. After January 1, 2020, no real property may be annexed to the Property unless such annexation is approved by a two-thirds (2/3) vote of the Members of the Association.

10.2. Withdrawal of Property. For so long as Declarant has authority to appoint and remove directors and officers of the Association, Declarant, without the consent of the Class A Members, shall have the right to withdraw portions of the Property from the provisions of this Declaration if the withdrawn property has been subjected to the provisions of this Declaration in error, or if the withdrawal is required by any changes in the plan for the Development. Such withdrawal shall be accomplished by filing in the Office of the Clerk of the Superior Court of Cobb County, an amendment to this Declaration which shall be executed by the Declarant and has been consented to by the Owners of the real property to be withdrawn, if any portion of said real property is owned by someone other than Declarant.

10.3. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, Design Standards, or any amendments thereto, until Residences on all Lots in the Development have been sold to homeowners, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Development as Declarant may deem necessary, such facilities and activities as may reasonably be required by the Declarant and such builder in the development, construction, and sales activities related to property subject or which may be made subject to this Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on, or in the Development; the right to tie into any portion of the Development with driveways, 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, natural gas, cable television, broadband communications delivery systems, water, sewer and drainage lines and facilities constructed or installed in, on, under, and/or over the Development; the right to carry on sales and promotional activities in the Development; the right to maintain sales signs and project signs on individual Lots, within the right-of-way of any road, and at the entrance(s) to the Development; and the right to construct and operate business offices, signs, construction trailers, material storage areas, model residences, off-street parking areas, and sales offices. Declarant and any such builder or developer may use residences or offices owned or leased by Declarant or such builder or developer as model residences and sales offices. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person causing any damage at its sole expense.

**ARTICLE 11.  
MISCELLANEOUS**

11.1. No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

11.2. Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

11.3. Headings. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

11.4. Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

11.5. Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consents of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the ACC, an Owner, or any other person, shall be in writing. Except where different or additional notice provisions are provided in this Declaration, all such writings shall be sufficient if personally delivered or if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

Declarant: Avignon, LLC  
2233 Peachtree Road  
Atlanta, Georgia 30309

Owners: Each Owner's address as registered with the Association in accordance with the By-Laws, or if no such address has been registered, at the Owner's last-known address.

The Declarant reserves the right to change its address from time to time by filing an amendment to this Declaration specifying its new address in the Deed Records of Cobb County, Georgia.

Any written communication mailed in accordance with this Section 11.5 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

11.6. No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration or any provision herein is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability. In addition, neither the Declarant nor the Association shall have any liability of any kind as a result of any failure to enforce any provision contained in this Declaration, the By-Laws, the rules and regulations adopted by the Association, or the Design Standards.

11.7. Association's Insurance.

(a) The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Area against loss or damage by fire or other hazards, including, without limitation, extended coverage and

vandalism and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation) of any repair or reconstruction in the event of damage or destruction from any such hazard; provided that the amount of such coverage shall be subject to the consent and approval of Declarant for so long as Declarant owns any Lot primarily for the purpose of sale.

(b) The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all the Common Area and all damage or injury caused by the negligence of the Association, its members, its officers and directors, or any of its agents. Such public liability policy shall have at least \$1,000,000.00 of coverage with respect to the injury to or death of any one person, \$1,000,000.00 with respect to any one occurrence of bodily injury or death, and \$100,000.00 with respect to property damage.

(c) The Board or its duly authorized agents shall have the authority to and may obtain (i) workmen's compensation insurance to the extent necessary to comply with any applicable laws and (ii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

(d) The Board shall conduct at least once every two (2) years an insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all insurable improvements upon the Lots and the Common Area, by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with housing construction in the Atlanta, Georgia area. All property insurance policies obtained by the Association may contain reasonable deductibles, and the amounts thereof shall be added to the face amounts of such policies in determining whether such insurance coverage equals at least the full replacement costs of such insured improvements.

(e) All such insurance coverage obtained by the Board shall be written in the name of the Association, and costs of all such coverage shall be a common expense of the Association. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Development shall be vested in the Board; provided, however, that such adjustment and settlement shall be subject to the approval of Declarant for so long as Declarant owns any Lot primarily for the purpose of sale, and no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Insofar as available and permitted by law, the Association shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth:

(i) All policies shall be written with a company licensed to do business in the State of Georgia and holding a rating of A-XI or better in the financial category as established by Best's Insurance Reports if such a company is available and, if not available, its equivalent rating or the best rating possible.

(ii) In no event shall the Insurance coverage obtained and maintained by the Board hereunder be brought into contribution with Insurance purchased by individual Owners or their mortgagees.

(iii) All policies shall contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's directors and officers, the Owners, and their respective families, servants, agents, tenants, guests, and invitees, including, without limitation, the Association's manager.

(iv) All policies shall contain a provision that no policy may be cancelled, invalidated, or suspended on account of the conduct of one or more of the individual Owners, or their respective families, tenants, agents, and guests, or on account of the acts of any director, officer,

employee, or agent of the Association or of its manager, without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

(v) All policies shall contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by Individual Owners.

(vi) All liability insurance shall contain cross-liability endorsements to cover liability of the Association to an individual Owner.

11.8. Owner's Insurance.

(a) Each Owner shall obtain and continue in effect, as his own expense, adequate property insurance for the benefit of the Owner and the Association, and insuring all insurable Structures and Improvements on his Lot, including, without limitation, the Townhouse, garage, and other improvements thereon and all Limited Common Areas appurtenant thereto, against loss or damage by fire or other hazards, and malicious mischief, such insurance coverage to be in an amount sufficient to cover the full replacement cost (without depreciation) of any repair or reconstruction in the event of damage or destruction from any such hazard; provided that the amount of such coverage shall be subject to the consent and approval of Declarant for so long as Declarant owns any Lot primarily for the purpose of sale.

(b) Each Owner shall furnish the Association with a copy of each such policy within ten (10) days following the acquisition of such coverage.

(c) Insofar as available and permitted by law, each such policy shall contain the following provisions:

(i) All policies shall be written with a company licensed to do business in the State of Georgia and holding a rating of A-XI or better in the financial category as established by Best's Insurance Reports if such a company is available and, if not available, its equivalent rating or the best rating possible,

(ii) All property Insurance policies shall be for the benefit of the Owner and his mortgagee, as their interests may appear, and shall name the Association as an additional insured.

(iii) All policies shall contain a waiver of the insurer's right to cancel without first giving thirty (30) days' prior written notice of such cancellation to the Association and to any mortgagee to which a mortgagee endorsement has been issued.

(iv) All policies shall contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's directors and officers, the Owners, and their respective families, servants, agents, tenants, guests, and invitees, including, without limitation, the Association's manager.

(v) All policies shall contain a provision that the "other insurance" clauses in such policies exclude from the consideration policies obtained by the Association.

(vi) All liability insurance shall contain cross-liability endorsements to cover liability of the Owner to the Association.

(d) In the event an Owner fails to obtain adequate property insurance coverage as required herein, the Association may, but shall not be required to, obtain and continue in effect such property insurance. The costs of such insurance shall be reimbursed to the Association by the Owner immediately upon request by the Association. The Association, however, shall have no liability if it fails to obtain such insurance.

11.9. Disbursement of Proceeds. All property insurance policies purchased by the Owners shall provide that proceeds covering property losses of Owners other than Declarant shall be paid to the Association as trustee. The duty of the Association as trustee shall be to receive such proceeds as paid to it, to hold the same for the benefit of the Owners and their mortgagees for the purposes elsewhere stated herein, and to disburse such funds as set forth hereinbelow. If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after paying such costs of repairs or reconstruction, including any proceeds held by Declarant or its mortgagee, shall be disbursed or distributed in the manner provided below with respect to insurance proceeds collected when such damage or destruction is not repaired or reconstructed. If it is determined as provided in Section 11.10 hereof that the damage or destruction for which such proceeds are paid shall not be repaired or reconstructed, such proceeds shall first be used to restore the damaged portion of the Property as near as is practicable to its natural state, and the remaining proceeds shall then be disbursed in the manner as provided below:

(a) Proceeds on account of damage to Lots, or on account of damage to Limited Common Areas appurtenant to Lots, shall be disbursed to the Owners of the damaged Lots or appurtenant Limited Common Areas in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Board.

(b) In the event a mortgagee endorsement has been issued as to any Lot, the share of an Owner shall be disbursed to the mortgagee and the Owner as their interests may appear. In the event of substantial damage to or destruction of any Lot or any part of the Common Area, the holder of any First Mortgage or secondary priority purchase money mortgage encumbering a Lot shall be entitled to the timely written notice of any such damage or destruction.

#### 11.10. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Development covered by insurance written in the name of the Association, the Board or its duly authorized agents shall proceed with the filing and adjustment of all claims arising under such insurance and to 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 such property to substantially the same condition in which it existed prior to the fire or other casualty, with each Structure on each Lot and the Common Area having the same boundaries and location as before, and all construction or reconstruction to be in substantial conformity with that which existed prior to the damage or destruction. The Association shall have no liability with respect to the adequacy of the insurance proceeds.

(b) Any such damage or destruction shall be repaired or reconstructed unless the Declarant, for so long as Declarant owns a Lot primarily for the purpose of sale, together with at least seventy-five percent (75%) of the total membership of the Association, shall decide within sixty (60) days after such casualty not to repair or reconstruct. If the damage includes one or more Townhouses, garages, or other improvements (including Limited Common Areas) located on or appurtenant to the Lots, the written consent of the Owner or Owners of the Lots thereby affected must be obtained as part of said seventy-five percent (75%). 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 said period, then the period shall be extended until such information shall be made available; provided, however, that such extension shall not exceed beyond sixty (60) days. No mortgagee shall have any right to participate in the determination of whether the damage or destruction shall be repaired or reconstructed.

(c) In the event that it should be determined by the Declarant and the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed, then and in that event the insurance proceeds, if any, shall first be used to restore the damaged portions of the Property as near as is practicable to its natural state, and such parcels shall be maintained by the Association in a neat and attractive condition as a portion of the Common Area, and the remaining insurance proceeds shall then be disbursed as provided in Section 11.9 hereof. In the event that any Townhouses, garages, or other improvements on the Lots are not repaired and reconstructed, but rather are restored to their natural state as provided in this subsection (c), the Owners of such Lots shall convey by quitclaim deed to the Association, for no consideration other than any proceeds disbursed as provided in Section 11.9 hereof, their interests in such Lots or such portions thereof so that such parcels shall become part of the Common Area.

11.11. Assessments. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a special assessment or assessments to provide sufficient funds to pay such excess cost of repair or reconstruction in the following manner:

(a) Any such assessment on account of damage or destruction to any Lot or to Limited Common Areas appurtenant thereto shall be assessed against the Owner of the damaged Lot or the Limited Common Areas appurtenant thereto.

(b) Any assessment on account of damage or destruction to any Common Area (excluding Limited Common Areas) shall be assessed equally against all Owners in the Development.

Additional assessments, as needed, may be made in like manner at any time during or following the completion of any repair or reconstruction.

11.12. Repair and Reconstruction. If the damage or destruction is to be repaired or reconstructed, the funds for the payment of costs for repair or reconstruction shall consist of the proceeds of insurance and funds collected by the Association from assessments as provided herein, and shall be disbursed in payment of such costs in the following manner:

(a) The portion of insurance proceeds representing damage to the Lot or appurtenant Limited Common Areas for which the responsibility of reconstructing or repair lies with an Owner shall be paid by the Association to the Owner, or if there is a mortgagee endorsement as to such Lot, then to the Owner and such mortgagee jointly, who shall use such proceeds to repair or reconstruct the damage or destruction which is the responsibility of the Owner. Each Owner shall be responsible for the repair and replacement, in a good and workmanlike manner, of all portions of his Lot and the Townhouse and garage located thereon, including all fixtures, equipment, and appliances installed in his Townhouse and garage, and all Limited Common Areas appurtenant to his Lot, whether or not the insurance proceeds are adequate to cover all such required work. All other repairs or reconstruction shall be the responsibility of the Association. Subject to the approval of the Board, the Association may, but shall not be required to, undertake the repair or replacement of some or all of the damage or destruction which is the responsibility of an Owner; provided, however, under no circumstances shall other Owners in the Development be required to bear any portion of the costs for any repairs or replacements which are the responsibility of a particular Owner, the liability therefor in all cases being that of the Owner who is responsible for such repairs or replacements under the provisions of this Declaration.

(b) The portion of insurance proceeds representing damage to the Common Area (excluding Limited Common Areas) shall be disbursed by the Association at such times and in such amounts as the Board shall determine, for payment of such reconstruction and repair.

(c) It shall be presumed that the first sums disbursed in payment of costs of construction and repair shall be from insurance proceeds. If there are remaining funds after payment of all costs for such reconstruction and repair, such balance shall be distributed to the beneficial owners thereof in the manner stated in Section 11.9 hereof; provided, however, that the portion of a distribution to an Owner which is less than the assessments paid by such Owner with respect to such damage or destruction shall not be made payable to the mortgagee having an interest in such Lot unless such mortgagee shall have advanced any portion of such assessment paid by the Owner, in which event the agreement between the Owner and such mortgagee shall prevail.

(d) The Association may hire third-party consultants, at the Owner's expense, to supervise any repairs or reconstruction of an Owner's Townhouse, garage, or other improvements on the Owner's Lot.

11.13. Lots Owned by Declarant. Any of the foregoing provisions of this Article 11 to the contrary notwithstanding, with respect to any damaged Lot owned by Declarant, including any Limited Common Areas appurtenant to such Lot, it shall be the responsibility of Declarant to perform the functions which are herein specified to be performed by either the Owner or the Association with respect to such Lot. That is, in the event of damage or destruction by fire or other casualty to any Lot owned by Declarant, including any Limited Common Areas appurtenant to such Lot, it shall be the responsibility of Declarant to file and adjust all insurance claims affecting the same, and if the decision not to repair or to reconstruct any such damaged Lot owned by Declarant is not made as provided in Section 11.10 hereof, then it shall be the responsibility of Declarant to repair or reconstruct such damage.

11.14. Variances. Notwithstanding anything to the contrary contained herein, the Declarant or the Board, or the designee of either of them, shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws, any rule, regulation, or use restriction adopted by the Association, and the Design Standards adopted by the Architectural Control Committee if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Development.

11.15. Grievances. In the event any Owner intends to commence a legal action against the Declarant or the Association, or any of their officers, directors, employees, or agents, for any matter related to this Declaration, the Association, the Architectural Control Committee, the Design Standards adopted by the Architectural Control Committee, or the Common Area, as a condition precedent to the bringing of such action, such Owner must make a good faith effort to meet with the Declarant or the Association, as the case may be, in person, at which time such Owner shall state his or her grievance and in good faith give the Declarant or the Association an opportunity to respond.

11.16. Security. THE ASSOCIATION OR THE DECLARANT MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SAFETY AT THE DEVELOPMENT; HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES, ACKNOWLEDGES AND AGREES THAT NEITHER THE ASSOCIATION NOR THE DECLARANT IS A PROVIDER OF SECURITY, AND NEITHER PARTY SHALL HAVE A DUTY TO PROVIDE SECURITY AT THE DEVELOPMENT. FURTHERMORE, THE ASSOCIATION DOES NOT GUARANTEE THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE PROPERTY AND COMMIT CRIMINAL ACTS ON THE PROPERTY, NOR DOES THE ASSOCIATION GUARANTEE THAT CRIMINAL ACTS ON THE PROPERTY WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER AND OCCUPANT TO PROTECT HIS OR HER PERSON AND PROPERTY, AND ALL RESPONSIBILITY TO PROVIDE

SUCH SECURITY SHALL LIE SOLELY WITH EACH OWNER AND OCCUPANT. NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SAFETY MEASURES UNDERTAKEN.

**ARTICLE 12.  
MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of first mortgages on Residences in the Development. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained herein or therein.

12.1. Special Mortgagee Provisions.

(a) As used in this Section 12.1, the term "Eligible Holder" shall mean a holder, insurer, or guarantor of a first mortgage on a Lot which has requested notice in accordance with the provisions of Section 12.1(b).

(b) A holder, insurer, or guarantor of a first mortgage, upon written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number), will be entitled to timely written notice of the following:

(i) any proposed amendment of the Declaration effecting a change in (A) the boundaries of any Lot or the exclusive easement rights appertaining thereto; (B) the interests in the Common Area or the liability for common expenses appertaining thereto; (C) the number of votes in the Association appertaining to any Lot; or (D) the purposes to which any Lot or the Common Area are restricted;

(ii) any proposed termination of the administration of the Common Area pursuant to this Declaration;

(iii) any condemnation loss or any casualty loss which affects a material portion of the Property, or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by such Eligible Holder;

(iv) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first mortgage held by such Eligible Holder which remains uncured for a period of sixty (60) days;

(v) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(vi) any proposed action which would require the consent of a specified percentage of Eligible Holders, as specified herein; and

(vii) an annual financial statement, or audit if available, of the Association for the immediately preceding fiscal year, free of charge.

(c) To the extent permissible under the law of the State of Georgia, the following provisions shall apply:

(i) Any restoration or repair of the Common Area after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications, unless the approval of the Eligible Holders of first mortgages

on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to mortgages held by such Eligible Holders are allocated, is obtained.

(ii) Any election to terminate the administration of the Common Area pursuant to this Declaration after substantial destruction or a substantial taking in condemnation of the Property must require the approval of the Eligible Holders of first mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to mortgages held by such Eligible Holders are allocated.

(d) The following provisions do not apply to amendments to the constituent documents or termination of the Association pursuant to Section 12.1(c) hereof made as a result of destruction, damage, or condemnation, or to the addition of land pursuant to any plan of expansion or phased development previously approved by the Department of Housing and Urban Development ("H.U.D.") or the Veterans Administration ("V.A.") to the extent such approval is required by H.U.D. or the V.A.:

(i) The consent of Owners representing at least sixty-seven percent (67%) of the Class "A" votes and of the Declarant, so long as it holds any land subject to this Declaration, and the approval of the Eligible Holders of first mortgages on Lots to which at least sixty-seven percent (67%) of the votes of Lots subject to a mortgage appertain, shall be required to terminate the administration of the Property subject to this Declaration.

(ii) The consent of Owners representing at least sixty-seven percent (67%) of the Class "A" votes and of the Declarant, so long as it holds any land subject to this Declaration, and the approval of Eligible Holders of first mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to a mortgage appertain, shall be required to materially amend any provisions of this Declaration, the By-Laws or the Articles of Incorporation to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

- (A) Voting;
- (B) Assessments, assessment liens, or subordination of such liens;
- (C) Reserves for maintenance, repair, and replacement of the Common Area;
- (D) Insurance or fidelity bonds;
- (E) Rights to use of the Common Area;
- (F) Responsibility for maintenance and repair of the several portions of the Property;
- (G) Expansion or contraction of the Property or the addition, annexation, or withdrawal of land to or from the Property;
- (H) Boundaries of any Lot;
- (I) Convertibility of Lots into Common Area or of Common Area into Lots;
- (J) Leasing of Lots;
- (K) Imposition of any right of first refusal or similar restriction on the right of a Lot Owner to sell, transfer, or otherwise convey his or her Lot;

- (L) Establishment of self-management by the Association where professional management, if any, has been employed; and
- (M) The approval of Eligible Holders of first mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to a mortgage appertain, shall be required to amend any provisions included in this Declaration, the By-Laws or the Articles of Incorporation which are for the express benefit of holders or insurers of first mortgages on Lots.

(e) The provisions of this Section 12.1 shall not be construed to reduce the percentage vote that must be obtained from mortgagees of Lot Owners where a larger percentage vote is otherwise required by applicable law or in any other provision in this Declaration, the By-Laws, or the Articles of Incorporation for any of the actions contained in this Section 12.1.

12.2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two thirds (2/3) of the first mortgagees or at least two thirds (2/3) of the total Members of the Association entitled to vote thereon consent, the Association shall not:

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

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Residence;

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

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

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

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

12.3. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Residence in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Residence.

12.5. Amendment by Board. Should the Department of Housing and Urban Development ("H.U.D."), the Veterans Administration ("V.A."), the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article, or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

12.6. V.A. and H.U.D. As long as there is a Class B membership, the following actions shall require the prior approval of the V.A. so long as the V.A. is guaranteeing any mortgage in the Property, and the prior approval of H.U.D. so long as H.U.D. is insuring any mortgage in the Property: Annexation of additional land to the Property, except for annexation by Declarant in accordance with Article 10 pursuant to a plan of annexation previously approved by the V.A. or H.U.D.; dedication of Common Area to any public entity; and material amendment of the Declaration, By-Laws, or Articles of Incorporation.

12.7. Applicability of Article 12. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the By-Laws, or Georgia law for any of the acts set out in this Article.

12.8. Failure of Mortgagee to Respond. Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the mortgagee within thirty (30) days of the date of the Association's request.

**[Signatures on Following Page]**

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed as of the day and year first above written.

Signed, sealed and delivered in the presence of:

**DECLARANT:**

AVIGNON, LLC, a Georgia limited liability company

By: Jack G. Williams, Manager

Judy Bogart  
Unofficial Witness

[Signature]  
Notary Public  
My Commission expires:

[Notary Seal]



The Association, by the execution hereof, acknowledges and agrees that the Association is hereby bound by all of the Association's obligations under this Declaration.

IN WITNESS WHEREOF, the Association, acting through its duly authorized Officer, has caused this Declaration to be executed and sealed as of the day and year first above written.

Signed, sealed and delivered in the presence of:

VILLAGE TOWNHOMES AT AVIGNON HOMEOWNERS ASSOCIATION, INC.

By: Jack G. Williams, Manager

Judy Bogart  
Unofficial Witness

[Signature]  
Notary Public  
My Commission expires:

[Notary Seal]



**EXHIBIT "A"****LEGAL DESCRIPTION: TOWNHOME NORTH SECTION**

ALL THAT PIECE PARCEL OR LOT OF LAND LYING AND BEING IN LAND LOT 886 OF THE 17th DISTRICT OF COBB COUNTY, GEORGIA AND MORE FULLY SHOWN ON A FINAL PLAT FOR AVIGNON AT VININGS VILLAGE BY HIGHLAND ENGINEERING INC. DATED 5/25/2007 AND HAVING THE FOLLOWING METES AND BOUNDS TO WIT:

COMMENCING AT THE COMMON CORNER OF LAND LOTS 840, 841 886 & 887, SAID POINT BEING THE POINT-OF-COMMENCEMENT, (P.O.C.); THENCE ALONG THE WESTERN LINE OF LAND LOT 886 NORTH 01 DEGREES 11 MINUTES 26 SECONDS EAST (N01°11'26"E) FOR A DISTANCE OF 702.75' TO A POINT; THENCE NORTH 01 DEGREES 57 MINUTES 12 SECONDS EAST (N01°57'12"E) FOR A DISTANCE OF 59.82' TO A POINT; THENCE TURNING AND LEAVING SAID WESTERN LAND LOT LINE SOUTH 85 DEGREES 39 MINUTES 14 SECONDS EAST (S85°39'14"E) FOR A DISTANCE OF 20.84' TO A POINT; THENCE TURNING AND CONTINUING NORTH 37 DEGREES 05 MINUTES 51 SECONDS EAST (N37°05'51"E) FOR A DISTANCE OF 5.95' TO A POINT, SAID POINT BEING THE POINT-OF-BEGINNING, (P.O.B.)

THENCE NORTH 37 DEGREES 03 MINUTES 10 SECONDS EAST (N37°03'10"E) FOR A DISTANCE OF 101.66' TO A POINT; THENCE NORTH 52 DEGREES 32 MINUTES 57 SECONDS EAST (N52°32'57"E) FOR A DISTANCE OF 56.54' TO A POINT; THENCE NORTH 74 DEGREES 09 MINUTES 28 SECONDS EAST (N74°09'28"E) FOR A DISTANCE OF 54.75' TO A POINT; THENCE NORTH 79 DEGREES 10 MINUTES 29 SECONDS EAST (N79°10'29"E) FOR A DISTANCE OF 49.85' TO A POINT; THENCE NORTH 72 DEGREES 47 MINUTES 24 SECONDS EAST (N72°47'24"E) FOR A DISTANCE OF 44.70' TO A POINT; THENCE NORTH 56 DEGREES 08 MINUTES 46 SECONDS EAST (N56°08'46"E) FOR A DISTANCE OF 96.52' TO A POINT; THENCE NORTH 42 DEGREES 39 MINUTES 51 SECONDS EAST (N42°39'51"E) FOR A DISTANCE OF 224.70' TO A POINT; THENCE NORTH 28 DEGREES 39 MINUTES 51 SECONDS EAST (N28°39'51"E) FOR A DISTANCE OF 23.51' TO A POINT; THENCE TURNING AND CONTINUING SOUTH 85 DEGREES 42 MINUTES 44 SECONDS EAST (S85°42'44"E) FOR A DISTANCE OF 21.99' TO A POINT; THENCE SOUTH 85 DEGREES 43 MINUTES 21 SECONDS EAST (S85°43'21"E) FOR A DISTANCE OF 31.96' TO A POINT; THENCE TURNING AND CONTINUING NORTH 64 DEGREES 38 MINUTES 42 SECONDS EAST (N64°38'42"E) FOR A DISTANCE OF 68.71' TO A POINT; THENCE NORTH 88 DEGREES 08 MINUTES 43 SECONDS EAST (N88°08'43"E) FOR A DISTANCE OF 35.09' TO A POINT; THENCE TURNING AND CONTINUING SOUTH 51 DEGREES 33 MINUTES 45 SECONDS EAST (S51°33'45"E) FOR A DISTANCE OF 94.37' TO A POINT; THENCE TURNING AND CONTINUING ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 29.50' AND AN ARC LENGTH OF 14.05', SAID CURVE BEING SUBTENDED BY A CHORD BEARING OF SOUTH 38 DEGREES 37 MINUTES 32 SECONDS WEST (S38°37'32"W) FOR A CHORD DISTANCE OF 13.92' TO A POINT; THENCE SOUTH 52 DEGREES 16 MINUTES 15 SECONDS WEST (S52°16'15"W) FOR A DISTANCE OF 21.17' TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 110.50' AND AN ARC LENGTH OF 96.79', SAID CURVE BEING SUBTENDED BY A CHORD BEARING OF SOUTH 27 DEGREES 10 MINUTES 34 SECONDS WEST (S27°10'34"W) FOR A CHORD DISTANCE OF 93.73' TO A POINT; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 69.50' AND AN ARC LENGTH OF 66.90', SAID CURVE BEING SUBTENDED BY A CHORD BEARING OF SOUTH 29 DEGREES 39 MINUTES 34 SECONDS WEST (S29°39'34"W) FOR A CHORD DISTANCE OF 64.35' TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 182.50' AND AN ARC LENGTH OF 47.33', SAID CURVE BEING SUBTENDED BY A CHORD BEARING OF SOUTH 49 DEGREES 48 MINUTES 31 SECONDS WEST (S49°48'31"W) FOR A CHORD DISTANCE OF 47.19' TO A POINT; THENCE SOUTH 42 DEGREES 22 MINUTES 47 SECONDS WEST (S42°22'47"W) FOR A DISTANCE OF 43.83' TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 232.50' AND AN ARC LENGTH OF 46.71', SAID CURVE BEING SUBTENDED BY A CHORD BEARING OF SOUTH 36 DEGREES 37 MINUTES 28 SECONDS WEST (S36°37'28"W) FOR A CHORD DISTANCE OF 46.63'



TO A POINT; THENCE SOUTH 30 DEGREES 52 MINUTES 10 SECONDS WEST (S30°52'10"W) FOR A DISTANCE OF 145.15' TO A POINT; THENCE SOUTH 27 DEGREES 28 MINUTES 15 SECONDS WEST (S27°28'15"W) FOR A DISTANCE OF 96.23' TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 817.01' AND AN ARC LENGTH OF 12.89'; SAID CURVE BEING SUBTENDED BY A CHORD BEARING OF SOUTH 28 DEGREES 59 MINUTES 29 SECONDS WEST (S28°59'29"W) FOR A CHORD DISTANCE OF 12.89' TO A POINT; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 99.16' AND AN ARC LENGTH OF 29.95'; SAID CURVE BEING SUBTENDED BY A CHORD BEARING OF SOUTH 24 DEGREES 57 MINUTES 46 SECONDS WEST (S24°57'46"W) FOR A CHORD DISTANCE OF 29.84' TO A POINT; THENCE SOUTH 37 DEGREES 54 MINUTES 25 SECONDS WEST (S37°54'25"W) FOR A DISTANCE OF 98.23' TO A POINT LOCATED ON THE NORTHERN TOP OF BANK OF A CREEK; THENCE TURNING AND CONTINUING ALONG SAID TOP OF BANK NORTH 59 DEGREES 18 MINUTES 39 SECONDS WEST (N59°18'39"W) FOR A DISTANCE OF 13.98' TO A POINT; THENCE NORTH 44 DEGREES 35 MINUTES 03 SECONDS WEST (N44°35'03"W) FOR A DISTANCE OF 21.60' TO A POINT; THENCE NORTH 47 DEGREES 30 MINUTES 45 SECONDS WEST (N47°30'45"W) FOR A DISTANCE OF 41.08' TO A POINT; THENCE NORTH 58 DEGREES 04 MINUTES 26 SECONDS WEST (N58°04'26"W) FOR A DISTANCE OF 8.52' TO A POINT; THENCE NORTH 23 DEGREES 24 MINUTES 21 SECONDS WEST (N23°24'21"W) FOR A DISTANCE OF 24.22' TO A POINT; THENCE NORTH 69 DEGREES 42 MINUTES 16 SECONDS WEST (N69°42'16"W) FOR A DISTANCE OF 41.06' TO A POINT; THENCE NORTH 42 DEGREES 27 MINUTES 52 SECONDS WEST (N42°27'52"W) FOR A DISTANCE OF 16.64' TO A POINT; THENCE NORTH 43 DEGREES 19 MINUTES 02 SECONDS WEST (N43°19'02"W) FOR A DISTANCE OF 25.79' TO A POINT; THENCE NORTH 47 DEGREES 52 MINUTES 21 SECONDS WEST (N47°52'21"W) FOR A DISTANCE OF 51.60' TO A POINT; THENCE NORTH 48 DEGREES 40 MINUTES 34 SECONDS WEST (N48°40'34"W) FOR A DISTANCE OF 27.05' TO A POINT; THENCE NORTH 65 DEGREES 19 MINUTES 11 SECONDS WEST (N65°19'11"W) FOR A DISTANCE OF 29.40' TO A POINT; THENCE NORTH 71 DEGREES 41 MINUTES 47 SECONDS WEST (N71°41'47"W) FOR A DISTANCE OF 28.29' TO A POINT; THENCE NORTH 63 DEGREES 10 MINUTES 30 SECONDS WEST (N63°10'30"W) FOR A DISTANCE OF 35.24' TO A POINT; THENCE NORTH 79 DEGREES 29 MINUTES 32 SECONDS WEST (N79°29'32"W) FOR A DISTANCE OF 18.57' TO A POINT; THENCE NORTH 58 DEGREES 20 MINUTES 18 SECONDS WEST (N58°20'18"W) FOR A DISTANCE OF 8.58' TO A POINT; THENCE NORTH 61 DEGREES 42 MINUTES 57 SECONDS WEST (N61°42'57"W) FOR A DISTANCE OF 18.86' TO THE POINT-OF-BEGINNING, (P.O.B.)

SAID TRACT OF LAND CONTAINING 4.17 ACRES = 181,685 SQ. FT..

**EXHIBIT "B"**

**BY-LAWS**

**OF**

**VILLAGE TOWNHOMES AT AVIGNON  
HOMEOWNERS ASSOCIATION, INC.**

## **BY-LAWS**

### **ARTICLE 1. NAME AND LOCATION**

The name of the association is Village Townhomes at Avignon Homeowners Association, Inc. (hereinafter referred to as the "Association"). The principal office of the Association (until otherwise designated by the Board) (as hereinafter defined) shall be located at 2233 Peachtree Road, Atlanta, Georgia 30309, but meetings of Members and directors may be held at such other places within the State of Georgia, as may be designated by the Board.

### **ARTICLE 2. DEFINITIONS**

Unless otherwise set forth herein, the terms used in these By-Laws shall have the same meanings ascribed to such terms as set forth in the Declaration of Covenants, Restrictions, and Easements for Village Townhomes at Avignon, dated as of March 19, 2008, which has been executed by Avignon, LLC, a Georgia limited liability company, with respect to a community known as Village Townhomes at Avignon, and is to be executed by a duly authorized officer of the Association, and is to be filed for record in the office of the Clerk of the Superior Court of Cobb County, Georgia, as such Declaration may be amended from time to time, and which Declaration is incorporated herein by reference.

### **ARTICLE 3. MEETINGS**

3.1. Annual Meeting of Members. The regular annual meeting of the Members shall be held not later than six (6) months past the end of the fiscal year of the Association, on a date (which is not a legal holiday) and at such place within the State of Georgia, as shall be designated in the call of meeting pursuant to Section 3.3 below. If no such date is designated, the annual meeting shall be held on the third Monday in March, if not a legal holiday, and if a legal holiday, then on the next business day succeeding. The Members shall at such annual meeting elect a Board for the ensuing year, in the manner provided in Article 4 hereof, and shall have authority to transact any and all business which may be brought before such meeting.

3.2. Special Meeting of Members. Special meetings of Members shall be held at such place within the State of Georgia as shall be designated in the call of the meeting. Special meetings may be called by the President at any time and must be called by the President when so requested in writing by any two (2) directors or by twenty-five percent (25%) of the Class A Membership.

3.3. Notice of Meetings. Written notice of the place, date, and time of every annual or special meeting of Members shall be mailed to each Member at least fifteen (15) days before such meeting. Each Member shall register his address with the Association, and notices of meetings shall be mailed to him at such address, and if no such address has been registered, at the last-known address of the Member. If for a special meeting, such notice shall state the purposes or objects of the meeting. It shall not be necessary that notice of an annual meeting specify the business to be transacted at such meeting, but such notice shall specify the number of directors to be elected at such annual meeting.

3.4. Quorum. Unless otherwise provided in the Declaration, a quorum at any meeting of Members, whether annual or special, shall consist of the presence at such meeting, in person or by

proxy, of Members entitled to cast one-third (1/3) of the votes of each Class of Membership. Unless otherwise provided in the Articles of Incorporation of the Association, or in the Declaration, or in these By-Laws, a majority of the votes entitled to be cast by all Members present at a meeting shall be necessary and sufficient to decide and act upon any question which shall come before the meeting. No business shall be transacted at any meeting unless a quorum is present.

3.5. **Voting.** Voting rights of Members shall be as set forth in the Declaration. Where any Member is a group or entity other than one individual person, the vote on behalf of such Member shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such Member, and delivered to the Secretary of the Association.

#### **ARTICLE 4. DIRECTORS**

4.1. **Number.** The affairs of this Association shall be managed by an initial Board of four (4) directors, who do not need to be Members of the Association, and who shall be appointed and removed in accordance with Section 3.8 of the Declaration until the date specified in Section 3.8 of the Declaration. Once the control of the Association passes to the Class A Members as provided in the Declaration, the affairs of the Association shall be managed by a Board of three (3) directors. Once the control of the Association passes to the Class A Members, the exact number of directors shall be determined, and may be changed from time to time, by a vote of the Members at any meeting of the Members at which a quorum is present.

4.2. **Term of Office.** At the first annual meeting after control of the Association has passed to the Class A Membership, the Members shall elect the directors to serve one (1) year terms. Thereafter, successor directors shall be elected for one (1) year terms. All directors shall hold office until their successors have been elected.

4.3. **Removal.** Once the control of the Association passes to the Class A Members as provided in the Declaration, any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of the death, resignation, or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

4.4. **Compensation.** No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his reasonable actual expenses incurred in the performance of his duties.

4.5. **Action Taken Without a Meeting.** The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

4.6. **Nomination.** Nomination for elected members to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

4.7. Election. Election to the Board shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.8. Regular Meetings of Directors. Regular meetings of the Board shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

4.9. Special Meetings of Directors. Special meetings of the Board shall be held at such place within the State of Georgia as shall be designated in the call of such meetings. Special meetings of the Board may be called by the President at any time in his discretion, and must be called by the President whenever so requested in writing by two (2) members of the Board.

4.10. Notice of Meetings. Notices of special meetings of the Board shall be given by the President or the Secretary to each member of the Board, not less than three (3) days before the time at which such meetings are to convene. Said notices may be given by telephone, or by any other form of written or verbal communication. It shall not be necessary for notices of special meetings of the Board to state the purposes or objects of the meetings. The Directors may waive notice of any meeting.

4.11. Quorum. A quorum at any meeting of the Board shall consist of a majority of the members of the Board. Unless otherwise provided in the Articles of Incorporation of the Association, or in these By-Laws, or in the Declaration, a majority of those present at any meeting at which a quorum is present may decide all questions which may come before the meeting.

4.12. Powers. The Board shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Members and their guests thereon, and establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of any recreational facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association; such rights may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days, for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(d) declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; and

(e) employ, retain, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the Association, the Board, and the officers of the Association.

4.13. Duties. It shall be the duty of the Board to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special

meeting when such statement is requested in writing by one fourth (1/4) of the Class A Members who are entitled to vote;

(b) supervise all officers, agents, and employees of the Association, and see that their duties are properly performed;

(c) as more fully provided in the Declaration:

(i) fix the amount of the annual assessment against each Lot at least fifteen (15) days in advance of each annual assessment period;

(ii) send written notice of each assessment to every Owner subject thereto at least fifteen (15) days in advance of each annual assessment period; and

(iii) foreclose the lien against any property for which assessments are not paid within fifteen (15) days after due date or bring an action at law against the Owner or Owners personally obligated to pay the same;

(d) issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid; a reasonable charge may be made by the Board or the management company employed by the Association for the issuance of these certificates; if a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate insurance on property owned by the Association, as provided in Article 11 of the Declaration; and

(f) cause the Association to carry out all of its duties and obligations under the Declaration.

#### **ARTICLE 5. OFFICERS AND THEIR DUTIES**

5.1. Enumeration of Officers. The officers of the Association shall be a President and a Vice-President, who shall at all times be members of the Board, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

5.2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

5.3. Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or be removed, or otherwise be disqualified to serve.

5.4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

5.5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of 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.

5.6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

5.7. Multiple Offices. Before control of the Association has passed to the Class A Membership, the same person may hold more than one office. After control of the Association has passed to the Class A Membership, no person shall simultaneously hold more than one office, except that the same person can hold the office of Secretary and Treasurer, and officers can also hold special offices created pursuant to Section 5.4 of this Article.

5.8. Duties. The duties of the officers are as follows:

(a) President. The President shall preside at all meetings of the Members and of the Board; shall see that orders and resolutions of the Board are carried out; shall execute all leases, mortgages, deeds, promissory notes, and other written instruments on behalf of the Association.

(b) Vice-President. The Vice-President shall act in the place and stead of the President in the event of his absence, or his inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; shall keep the corporate seal of the Association and affix it on all papers requiring said seal; shall serve notice of meetings of the Board and of the Members; shall keep appropriate current records showing the Members of the Association, together with their addresses; and shall perform such other duties as required by the Board.

(d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes on behalf of the Association; shall keep proper books of account; shall, after control of the Association has passed to the Class A Membership, cause an annual review of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and shall deliver a copy of each to the Members; provided, however, that any management company employed by the Association may be authorized to sign checks without the signature of the Treasurer.

#### **ARTICLE 6. SEAL**

6.1. Corporate Seal. The corporate seal of the Association shall be in the following form, to-wit:

and the seal in such form is hereby adopted as the corporate seal of the Association.

#### **ARTICLE 7. MISCELLANEOUS**

7.1. The Declaration. All provisions contained in the Declaration with regard to rights, powers, and duties of the Association, the Members thereof (including, without limitation, classes of Members and qualifications and rights of the members of each class), and the Board thereof, are hereby

incorporated into these By-Laws by this reference, with the same effect as if such provisions were fully set forth herein.

7.2. Committees. The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purposes.

7.3. Books and Records. The books and records of the Association shall at all times, during reasonable business hours, be open for inspection by any Member of the Association and any institutional holder, insurer or guarantor of a first mortgage.

7.4. Indemnification. The Association shall indemnify any person made a party to any action, suit, or proceeding, whether civil or criminal, by reason of the fact that he, his testator, or intestate, is or was a director, officer, or employee of the Association, against the reasonable expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense of the action, suit, or proceeding, or in connection with any appeal in it. This right of indemnification shall not apply in relation to matters as to which the director, officer, or employee shall be adjudged in the action, suit, or proceeding to be liable for negligence or misconduct in the performance of any duty to the Association. The right to indemnification conferred by this Section shall not restrict the power of the Association to make any other indemnification permitted by law.

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

7.6. Parliamentary Rules. *Robert's Rules of Order* (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, these By-Laws, or a ruling made by the person presiding over the proceeding.

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

7.8. Notices. Unless otherwise specified in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications required or permitted to be sent under the Declaration or these By-Laws shall be in writing, and shall be deemed to have been duly given if delivered personally or if sent by first class mail, postage prepaid:

(a) If to a Member, at the address which the Member has registered in writing and filed with the Secretary or, if no such address has been registered, at the last-known address of the Member; or

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

If there are multiple Owners of a single piece of property, notice to one (1) shall be deemed to be notice to all.

7.9. Amendment. The provisions of the Declaration applicable to amendment of that instrument shall apply to any amendment to these By-Laws.



7.10. Fining Procedure. Except for the Leasing Fines provided in Section 6.20 of the Declaration, the Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

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

(i) the alleged violation;

(ii) the action required to abate the violation; and

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

(b) Notices. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board may, upon notice, impose a fine. The notice shall state:

(i) the nature of the alleged violation;

(ii) that the alleged violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine;

(iii) that any statement, evidence, and witnesses may be produced by the alleged violator at the hearing; and

(iv) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(c) Hearing. If a hearing is requested, it shall be held before the Board in executive session, and the alleged 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.

(d) Enforcement. The Board shall be entitled to enforce the collection of all fines and the abatement of all continuing violations by all means permitted under the Declaration or by Georgia law.