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**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
PARK AT MONROE
FULTON COUNTY, GEORGIA**

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**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR PARK AT MONROE
FULTON COUNTY, GEORGIA**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS is made by PARK AT MONROE, LLC, a Georgia Limited Liability Company (hereinafter the "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner, or has the consent of the owner, of all that tract or parcel of land lying and being in **Land Lot** of the District of Fulton County, City of Atlanta, Georgia, as more particularly described on Exhibit "A" and incorporated herein by reference (said property, together with any other real property that is hereafter submitted to the provisions of this Declaration, less and except any portions thereof that have been or may be dedicated to Fulton County, Georgia or any municipality or other government entity, and less and except any real property withdrawn from the provisions of this Declaration in accordance with the terms and conditions contained herein, being herein referred to as the "Property"); and

WHEREAS, Declarant intends to impose on the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and to establish a procedure for the overall development, administration, maintenance and preservation of the Property; and

WHEREAS, in furtherance of such plan, it is desirable to create an Association to own, operate, maintain and/or manage, as applicable, the Area of Common Responsibility (as defined below) and to administer and enforce the covenants and restrictions and design guidelines imposed hereby; and

WHEREAS, it is intended that every owner of any of the Lots shall automatically, and by reason of such ownership, be subject to this Declaration and a Member of the Association and subject to the assessments, charges, rules and regulations of the Association;

NOW THEREFORE, Declarant does hereby submit the Property to the provisions of this Declaration. This document establishes a mandatory membership homeowners association, but does not and is not intended to submit the Property to the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.*

**ARTICLE I.
DEFINITIONS**

As used in this Declaration, the following terms shall have the meanings ascribed to them in this Article, such definitions being cumulative of those set forth in the recitals and elsewhere in this Declaration.

"Additional Property" shall mean any and all real property lying and being within five (5) miles of the Property.

"Amenities" shall mean any facilities such as swimming pools, tennis courts or open space constructed for the recreational use and enjoyment of the Members.

"Annual Assessment" shall have the meaning specified in the Article entitled "ASSESSMENTS AND OTHER CHARGES", and shall constitute the assessments which, pursuant to the provisions of such Article, shall be levied by the Association against the Lots each year for the purpose of raising the funds necessary to pay the "Annual Expenses" (as that term is defined in such Article).

"Architectural Control Committee" or **"ACC"** shall mean those individuals appointed to have jurisdiction over construction on or within any portion of the Property and responsibility for administration of design guidelines, as more fully described in the Article entitled "Architectural Control."

"Area of Common Responsibility" shall mean the Common Areas, together with those other areas and matters, if any, which by the terms of this Declaration or by contract or agreement with any other Person become the responsibility of the Association.

"Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

"Association" shall mean Park at Monroe's Homeowners Association, Inc., a Georgia non-profit corporation, its successors and assigns.

"Board of Directors" or **"Board"** shall mean the body responsible for the administration of the Association, as provided in the Bylaws.

"Builder" shall mean any Person who purchases one (1) or more Lots for the purpose of constructing improvements for later sale to consumers or who purchases one (1) or more parcels of land within the Property for further subdivision, development and/or resale in the ordinary course of such Person's business. Any Person occupying or leasing an Improved Lot for residential purposes shall cease to be considered a Builder with respect to such Improved Lot on the date of such occupancy of the Improved Lot for residential purposes, notwithstanding that such Person originally purchased the Lot for the purpose of constructing improvements for later sale to consumers.

"Bylaws" shall mean the Bylaws of the Association, the initial version of which is attached hereto as Exhibit "B", as the same may be amended from time to time.

"Common Areas" shall mean, singularly or collectively, as applicable, all land, improvements and other properties that hereafter shall be deeded to, or acquired by, the Association for the common use and enjoyment of the Owners, including, but not limited to, the Amenities.

"Community Use Areas" shall mean any walking trails shown on the Plat and any sidewalks running parallel to the street that traverse the Improved Lot.

"Community Wide Standards" shall mean the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard shall initially be established by the Declarant and may be more specifically determined by the Architectural Control Committee. The Community Wide Standards may, but are not required to be, promulgated in writing.

"County Clerk" shall mean the Clerk of the Superior Court of the county where the Property is located.

"Declarant" shall mean Park at Monroe, LLC a Georgia limited liability company, and shall include any successor or assign who shall own or acquire any portion of the Property for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

"Declaration" shall mean this Declaration of Covenants, Restrictions and Easements for the Park at Monroe, as the same may be hereafter amended in accordance with the terms hereof.

"Development Period" shall mean the period of time during which the Declarant owns any property that is subject to this Declaration or has the unilateral right to subject Additional Property to this Declaration pursuant to Article II. The Declarant may, but shall not be obligated to, relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument with the County Clerk.

"Improved Lot" shall mean a Lot (i) which has been improved with a Residence, (ii) which has been sold to a Person who is not the Declarant or a Builder, and (iii) is not being used as a Model Home.

"Lot" shall mean each portion of the Property which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family, as shown and indicated as a "Lot" or "Unit" on any of the Plats which are hereafter recorded.

"Member" shall mean a Person subject to membership in the Association pursuant to the Article entitled "The Association".

"Model Home" shall mean a structure used by the Declarant or a Builder to show a prospective buyer what a similar housing type will look like when constructed on a Lot.

"Mortgage" shall mean a deed or other document by means of which title to any Lot is conveyed or encumbered to secure a debt of first priority. The term **"Mortgagee"** shall refer to a beneficiary or holder of a Mortgage.

"Owner" shall mean any Person who is a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Lot; provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be an Owner.

"Person" shall mean a natural person, corporation, trust, partnership or any other legal entity.

"Plats" shall mean all plats recorded in the County Clerk's plat book records, for any real property that may be submitted to this Declaration at any time and from time to time, together with all amendments thereto, and any and all other plats, and amendments thereto, that are hereafter recorded in the County Clerk's plat records for the purpose of subjecting any of the Additional Property to this Declaration.

"Primary Builder" shall mean BROCK BUILT HOMES, LLC, a Georgia limited liability company ("BROCK BUILT"), and each and every successor, successor-in-title or assign of BROCK BUILT from and after the date hereof who is Declarant, a Builder or a Mortgagee who has taken title for the purpose of later resale to a consumer and any other entity designated as a "Primary Builder" by Declarant by a written instrument recorded in the County Clerk's real property records. A Primary Builder shall be entitled to those rights and exemptions granted to a Builder, as well as such further rights and exemptions specifically granted to a Primary Builder herein.

"Property" shall have the meaning given to it in the first recital paragraph of this Declaration.

"Residence" or **"Townhome"** shall mean the structure on each Lot for which a certificate of occupancy has been issued by the applicable government authority.

"Supplemental Declaration" shall mean an instrument filed with the County Clerk which annexes additional property and/or imposes additional restrictions and/or obligations on the land described in such instrument.

ARTICLE II. PROPERTY SUBMITTED TO THIS DECLARATION

Section 1. Lots Hereby Subjected to this Declaration. The Declarant, for itself and its successors and assigns, does hereby submit the Property and the Lots to this Declaration. The Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration, including, but not limited to, the lien provisions set forth herein. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Lots shall be a permanent charge thereon, and shall run with the Lots.

Section 2. All Lots Bear the Burdens and Enjoy the Benefits of this Declaration. Every Owner, by taking record title to a Lot, agrees to all of the terms and provisions of this Declaration. Each of the Lots is subject to all the burdens, and enjoys all the benefits, made applicable hereunder.

Section 3. Annexation of Additional Property. The Declarant may, at any time, and from time to time, prior to twenty (20) years from the date hereof, subject all or part of the Additional Property to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration by executing and recording with the County Clerk an amendment to this Declaration describing the property being annexed. Declarant further has the right to convey to the Association additional Common Areas contained within such Additional Property, the maintenance of which may increase the amount of the Annual Assessment as provided elsewhere herein and may increase the amount of Annual Assessments which shall be levied against each Lot. No approval from any Member of the Association, or from anyone else whomsoever, shall be required for the Declarant to subject Additional Property to this Declaration.

From and after such recording, the annexed property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including, without limitation, all lien and assessment provisions set forth in this Declaration, and all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration shall be a permanent charge on, and shall run with, such annexed property.

In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall further have the right at its election, without the consent of any Owner or Owners, to subject any such annexed property to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens by filing a Supplemental Declaration with the County Clerk covering only such annexed property. The Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements and development guidelines contained in such additional declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the annexed property in order to reflect the different character and intended use of such property.

Section 4. Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period, for the purpose of removing any portion of the Property from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Property and is not contrary to the planned residential development requirements of the zoning ordinance in effect for the Property. This provision includes but is not limited to Declarant's right to convey property to any governmental entity, conservation or land trust as deemed desirable in Declarant's discretion. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if same is not the Declarant. If the property is part of the Common Areas, the Association shall also consent to the withdrawal and re-convey such property to Declarant, as the case may be, without consideration.

Section 5. Submission to a Master Community and Other Acts of Declarant. Declarant reserves the right to amend this Declaration during the Development Period to submit the Property and the Additional Property to a larger planned community, to subject the Property to a master association and to consolidate the Association with other homeowners or community associations.

Section 6. Townhome Boundaries. In the event that a side boundary of a Townhome abuts the side boundary of another Townhome, the side boundary for each such Improved Lot shall be a line consistent with and along the center of all firewalls separating such Townhome from the abutting Townhome. In the event that the side boundary of a Townhome does not abut the side boundary of another Townhome, the side boundary of the Lot shall be a line consistent with and along the outer exterior surface of the outside wall of such Townhome. In the event of any discrepancy between the boundaries of an Improved Lot, as described herein, and the boundaries of such Improved Lot when shown on the recorded Plats, the description of the boundaries of the Improved Lot set forth herein shall control. All of the area within the boundaries of each Improved Lot, as herein described and as shown and depicted on the recorded Plats, shall for all purposes constitute real property which may be owned in fee simple, subject to the terms, provisions, liens, charges, covenants, easements and restrictions of this Declaration.

ARTICLE III. ASSOCIATION PROPERTY

Section 1. Common Areas and Association Property. The Declarant or any Primary Builder shall have the right to transfer and convey to the Association, or cause the transfer and conveyance to the Association of, any portion of the Property owned by such Declarant or Primary Builder. All portions of the Property which are so transferred or conveyed to the Association shall thereafter constitute Common Areas. Said right may be exercised by the Declarant or Primary Builder any time, and from time to time, prior to twenty (20) years from the date hereof. Common Areas shall be conveyed to the Association subject to the rights and easements set forth in this Article, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements.

Section 2. Member's Rights in Association Property. Every Owner of every Lot shall have a non-exclusive right and easement of enjoyment and use in and to the Common Areas and such right and easement shall be appurtenant to, and shall pass with, the title to the Lot(s) owned by such Owner. The right and easement of enjoyment and use of the Common Areas are and shall be subject to the easements which are described in the Article entitled "Easements Over the Property", to the right of the Association to promulgate reasonable rules and regulations regarding the use of Common Areas, and the right of the Association, as provided in the Bylaws, to suspend the enjoyment rights of the Owner(s) of any Lot during any period in which any assessment which is due to the Association from such Owner remains unpaid, and for such period as the Board of Directors may consider appropriate for any infraction of its rules and regulations. No such suspension, however, shall prohibit the Owner of any Lot from using the Common Areas to the extent necessary for such Owner to have access to and from his Lot.

The Board of Directors, with the written consent of Declarant if in the Development Period, may permit other persons who are not residents of any Lots to use the Common Areas upon such terms and conditions, and for the payment of such fees, as shall be determined by the Board of Directors and Declarant if in the Development Period.

Section 3. No Partition. The Common Areas shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the Property and without the written consent of all holders of all Mortgages encumbering any portion of the Property.

Section 4. Condemnation. In the event that any part of the Common Areas shall be taken by any authority having the power of condemnation or eminent domain or conveyed in lieu of, and under threat of, condemnation by the Board of Directors acting on the written direction of the Owners of at least sixty seven percent (67%) of the Lots (and, if during the Development Period, the written consent of Declarant), the Association shall restore or replace the improvements on the remaining land included in the Common Areas to the extent available or possible unless, within sixty (60) days after such taking, the Owners of at least sixty seven percent (67%) of the Lots (and Declarant, if during the Development Period) otherwise agree. The provisions of the subsection immediately below regarding funds for the repair of damage or destruction shall apply. If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board of Directors shall determine.

Section 5. Damage or Destruction. In the event that any improvements located on any Common Areas shall be damaged or destroyed by any casualty, the Board of Directors shall proceed with the filing and settlement of all claims arising under any policy of insurance maintained by the Association with respect to such improvements and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements.

Any such damage or destruction shall be repaired or reconstructed unless it shall be decided, within sixty (60) days after the occurrence of casualty, by the Owners of at least seventy-five percent (75%) of the Lots, and by Declarant, if during the Development Period, not to so repair or reconstruct such damage. In the event that it shall be so decided not to repair or reconstruct some damage or destruction, the proceeds of any insurance as may become payable to the Association as a result of such damage or destruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy special assessments to cover the shortfall.

Section 6. Permitted Actions. Notwithstanding anything to the contrary in this Article, the Association, acting through the Board of Directors, may dedicate portions of the Common Areas to any local, state or federal governmental or quasi-governmental entity and may grant easements over the Common Areas for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, all without the approval of the membership.

Section 7. Reconveyance of Common Areas. Notwithstanding anything contained herein to the contrary, Declarant reserves the right to re-plat any Lot still owned by Declarant and shown on Plats in order to modify the boundary lines and to take such other steps reasonably necessary or desirable to make such re-platted Lot suitable for its intended use, including but not limited to, the relocation of easements, walkways, rights-of-ways, roads, bridges, parks, recreational facilities, and other Amenities to conform to the new boundaries of such re-platted Lots. Upon request of Declarant, the Association shall convey to Declarant any unimproved portions of the Property originally conveyed to the Association for no consideration, to the extent conveyed in error or needed by Declarant or Primary Builder to make adjustments to property lines to meet set-back requirements or for any other reason.

ARTICLE IV. EASEMENTS AND AGREEMENTS REGARDING THE PROPERTY

Section 1. Easements and Agreements Regarding All of the Property. The Property is subject to all easements and agreements of record. The Property shall further be subject to, and Declarant and the Association do hereby grant, the following easements:

(a) Easements Shown on Plats. The Property shall be subject to all easements, dedications, borders, buffers, restrictions and the like which are shown and depicted on the Plats as affecting and burdening the Property.

(b) Use of Common Areas. Declarant hereby reserves and establishes an easement for the exclusive use of such portions of the Common Areas as may be reasonably desirable, convenient or incidental to the construction and installation of improvements on, and the sale of, any Lots, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements shall be exercisable by Declarant and any Primary Builder and any and all other Persons who the Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents, brokers, Builders, and their subcontractors, irrespective of whether such persons are affiliated with the Declarant. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate one (1) year and thirty (30) days after the date that all of the Lots are Improved Lots and the construction of all Amenities has been completed. Such easements shall and do exist without affecting the obligation of the Owner of any Lot to pay assessments or charges coming due during such period of time as portions of the Common Areas shall be used by authorized persons pursuant to the exercise of the easements herein stated.

(c) Use of Private Streets. Declarant hereby grants, conveys, declares, creates, imposes and establishes a perpetual, nonexclusive right of way easement for vehicular and pedestrian access, ingress and egress over and across the private streets and sidewalks located within the Property. Any reference to private streets shall mean a reference to the private streets, alleyways and access easements as actually constructed and depicted on the Plats. The right of way easement herein granted shall permit joint usage of such easement by: (a) the Declarant and its affiliates; (b) any Builder; (c) the Owners and occupants of Lots; (d) the legal representatives, successors and assigns of the Owners; and (e) invitees and licensees of the Owners and occupants. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any right-of-way or access easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional nonexclusive easements to third parties, over, under and across the easement area. Declarant hereby reserves for the benefit of itself and Declarant and grants to the Association as Common Area, the perpetual nonexclusive right and easement upon, over and across those utility easement areas and private streets, alleyways and roads for the installation, maintenance, and use of such streets and roads, sidewalks, traffic directional signs, grading for proper drainage of said streets and roads, and related activities and improvements.

(d) Declarant Activities. Notwithstanding any provision contained in this Declaration, the Bylaws or the Articles of Incorporation to the contrary, or any amendments thereto, until the expiration of the Development Period, it shall be expressly permissible for Declarant, and any Person authorized by Declarant, to maintain and carry on, upon such portion of the Property as Declarant may deem necessary, such facilities and activities as may reasonably be required by Declarant or any Builder for the development, construction and sale of the Property, including without limitation the following: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Property; the right to tie into any portion of the Property with driveways, parking areas and walkways; the right to tie into and/or maintain and repair any device (without a tap-on or any other fee for doing so), replace, relocate, maintain, and repair any device which provides utility or similar service including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under, or over the Property; the right to carry on sales and promotional activities on the Property; the right to remove, add, reconfigure, relocate, modify, and alter any and all improvements located on the Common Area the right to keep entrance gates (if any) open during sales office hours; the right to construct and operate business offices, signs, construction trailers, and Model Homes; and the right to exercise all rights reserved to Declarant in this Declaration.

(e) Development Activities. Notwithstanding any provision contained in this Declaration, the Bylaws or the Articles of Incorporation to the contrary, or any amendments thereto, until the expiration of the Development Period, it shall be expressly permissible for Declarant, and any Person authorized by Declarant, to maintain and carry on, upon such portion of the Property as Declarant may deem necessary, such facilities and activities as may reasonably be required by Declarant or any Builder for the development, construction and sale of the Property, including without limitation the following: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Property; the right to tie into any portion of the Property with driveways, parking areas and walkways; the right to tie into and/or maintain and repair any device (without a tap-on or any other fee for doing so), replace, relocate, maintain, and repair any device which provides utility or similar service including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under, or over the Property; the right to carry on sales and promotional activities on the Property; the right to keep entrance gates (if any) open during sales office hours; the right to construct and operate business offices, signs, construction trailers, and Model Homes; and the right to exercise all rights reserved to Declarant in this Declaration.

(f) Primary Builder Activities. Declarant further reserves for the benefit of each Primary Builder the following non-exclusive easements, each of which is to be exercised in a commercially reasonable manner, in compliance with all applicable laws and regulations affecting the same: (i) the right of access, ingress and egress for vehicular and pedestrian traffic over, on or in the Property; (ii) the right to tie into any portion of the Property with driveways, parking areas and walkways; (iii) the right to tie into and/or maintain and repair any device (without a tap-on or any other fee for doing so), replace, relocate, maintain, and repair any device which provides utility or similar service including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under, or over the Property; (iv) the right to carry on sales and promotional activities on the Property; (v) the right to require that the entrance gates (if any) be kept open during sales office hours, as well as for all construction activity purposes; (vi) the right to construct and operate business offices, signs, construction trailers, and Model Homes; and (vii) the right to install and maintain directional and sales signs within the Common Areas advertising Lots for sale within the Property. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate with respect to a Primary Builder ten (10) days after the date that such Primary Builder does not own a Lot within the Property. Such easements shall and do exist without affecting the obligation of the Owner of any Lot to pay assessments or charges coming due during such period of time as portions of the Common Areas shall be used by authorized persons pursuant to the exercise of the easements herein stated.

Section 2. Easements Over Lots. The Lots shall further be subject to, and the Declarant does hereby grant, the following non-exclusive perpetual and temporary easements for the enjoyment of Declarant, the Association, any Builders and subcontractors authorized by Declarant, the Members, the Owners, and the successors-in-title of each:

(a) Entrance Features. There shall be a perpetual easement in favor of the Association and the Declarant for maintenance, repair and landscaping of any entrance monuments and entrance landscaping which are or will be located on any Lot and the repair and replacement of any water pipes and electrical lines which are a part thereof. The Owners

of any Lots on which these features are placed, or against which such features abut, shall not remove, camouflage, damage or otherwise alter in any way said entrance features.

(b) Entry. Each Lot shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go upon such Lot under such circumstances and for such purposes as are described elsewhere in this Declaration.

(c) Encroachments. Each Lot shall have a three (3) foot easement as measured from any point on the common boundary between such Lot and any adjoining Lot, or between such Lot and adjacent Common Areas, for encroachments and overhangs due to the placement or settling of the improvements constructed, reconstructed or altered thereon and for driveway, HVAC unit, utility meter, fence or other encroachments which may be erected in said easement area, unless such encroachment was due to the willful act of an Owner other than a Builder, Declarant or the Association.

(d) Private Alleys and Walking Trails. All Lots shall be subject to a perpetual easement in favor of the Association and all other Lot Owners for maintenance, management, repair, landscaping, and non-exclusive ingress, egress, use and enjoyment, of the private alleys and walking trails which are located on the Property, as shown on the Plats, whether said alleys and walking trails are located on the Common Areas or are located on Lots. This easement right includes the right of contractors engaged by the Association to enter upon any and all Lots from time to time as necessary in order to perform any of the above repair or maintenance work. The Owners of the Lots shall not impair access to, or otherwise alter in any way, said alleys, walking trails or landscaping.

(e) Slope Control. Each Lot shall be subject to an easement for slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow.

(f) Surface Water Drainage. Each Lot shall be subject to a perpetual easement in favor of the Association and all other Lots for the drainage of surface waters over, under or across such Lot, including any runoff or carry over of water from one Lot to another, if and to the extent that such cross Lot drainage condition was created by Declarant or by a Builder authorized by Declarant. All Lots on which storm sewer lines are located are further subject to a perpetual easement in favor of the Association and its authorized contractors for the maintenance, repair and replacement of the storm sewer lines. This right shall include the right of authorized contractors to enter upon said Lots from time to time as necessary to perform said work.

(g) Utilities. Each Lot shall be subject to a perpetual easement in favor of the Declarant, the Association, Builders and subcontractors, and, in the event that Declarant or a Builder installs utilities on a Lot which benefit adjoining Lot Owners, in favor of any benefited Lot Owners and their contractors and subcontractors, as well as any public utility company, water main, water services, sewer services or cable company, for the erection, installation, construction, maintenance, repair and replacement of wires, lines, meters, equipment, conduits, sewer taps, and attachments appurtenant to, above and below ground and in connection with the transmission of electricity, gas, water, telephone, community antennae or satellite dish, television cables and other utilities.

(h) Creeks and Stream Buffers. Any Lots located along any creek and stream buffers or other water feature that may be shown on the Plat shall be subject to a perpetual easement in favor of the Association and authorized contractors, as well as any public utilities or municipalities for the repair or maintenance of any areas along the creek and stream buffers and other water feature as shown on the Plat and this right shall include the right of authorized contractors to enter upon said Lots from time to time as necessary in order to perform said work. This section does not create an obligation of the Association to repair any areas along any creek and stream buffers or other water feature shown on the Plats. Neither the Association nor the Declarant shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of storm water retention or detention ponds, ponds, lakes, wetlands, creeks, streams or other areas of water within the Property.

(i) Construction and Boundary Line Improvements. Each Lot shall be subject to a temporary construction easement in favor of Declarant, authorized Builders and contractors, and adjoining Lot Owners for construction activities on any Lot, including but not limited to the installation of boundary line improvements such as walls, fences

and hedges. Any improvement made by an adjoining Lot Owner shall be subject to the architectural control provisions contained herein and must be approved by Declarant or the Association, as applicable, prior to installation.

(j) Perimeter Fencing. All Lots located along the perimeter of the Property shall be subject to a perpetual easement in favor of the Association for the installation, maintenance, repair and replacement of any fence installed or to be installed along the perimeter of the Property by the Declarant or a Primary Builder. The Owners of these Lots shall not remove, camouflage, damage or otherwise alter in any way said fencing. The easement rights to which these Lots shall be subject specifically include the right of contractors engaged by the Association to enter upon said Lots from time to time as necessary in order to perform repair and maintenance work.

(k) Maintenance. Each Lot shall be subject to a perpetual easement in favor of the Association and its contractors for the maintenance of the Lots as provided for in the Article entitled "Maintenance" herein. There is further reserved for the benefit of each Improved Lot a reciprocal appurtenant easement between all adjacent Improved Lots and between any Improved Lot and adjacent Common Areas for the purpose of maintaining or repairing the improvements located on each such Improved Lot. All such maintenance shall be performed with a minimum of interference to the quiet enjoyment of the adjacent Lot's Owner. Except in emergencies, entry onto a Lot shall occur only after providing the Owner of such Lot not less than forty-eight (48) hours advance notice and shall occur only during reasonable hours. Each Owner and the Association shall cooperate with each other Owner and/or occupant for purposes of exercising these easement rights and these easements shall be exercised only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner or Association exercising these easement rights shall pursue such work promptly and diligently and shall promptly repair any damage that arises out of such maintenance or repair work to the Lot(s) over which this easement is exercised.

(l) Easement for Non-Exclusive Use and Enjoyment of Community Use Areas. Each Lot shall be subject to the right of the Owners of all other Lots, and their guests, families and invitees, to the non-exclusive use and enjoyment of all Community Use Areas.

(m) Shared Facilities. There is reserved for the benefit of each Townhome which shares its front stoop, front steps, and/or front walk with an adjacent Townhome a reciprocal appurtenant easement with the adjacent Townhome for the non-exclusive use and enjoyment of the shared facilities.

ARTICLE V. THE ASSOCIATION

Section 1. The Association. Prior to the date this Declaration has been filed for record with the County Clerk, Declarant has caused the Association to be formed, and the Association does now exist, under its Articles of Incorporation and Bylaws.

The Association is and shall be responsible for the maintenance of the Area of Common Responsibility, the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as are required of the Association hereunder or as the Board of Directors shall deem to be in the best interests of the Members of the Association.

Section 2. Membership. Every Owner is and shall be a Member of the Association. In no event shall such membership be severed from the Ownership of such Lot.

Section 3. Remedies, Enforcement and Suspension of Membership Rights. In addition to and not in limitation of all other rights it may have, the Association, acting through its Board of Directors, shall have the full right and authority to enforce the architectural control provisions, use restrictions and all other provisions of the Declaration and Bylaws and the rules and regulations promulgated thereunder by the imposition of reasonable monetary fines, suspension of use and voting privileges, suspension of water or other utility service provided by or through the Association, and the exercise of self-help (specifically including but not limited to the towing or booting of vehicles that are in violation of the parking rules and regulations). Any such suspension of use and voting privileges shall not affect such Member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the Member's Lot in favor of the Association. The Association, acting through

its Board of Directors, shall further have the full and complete right to exercise reasonable business judgment in the decision to pursue enforcement action in any particular case, without waiver of the Association's right to enforce the same provision at a later time under other circumstance or preclude the Association from enforcing any other covenants, restriction or rule.

Section 4. Meetings of the Membership. All matters concerning the meetings of Members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to Members, the quorum required for the transaction of business at any meeting, and the vote required on any matter, shall be as specified in this Declaration, or in the Articles of Incorporation or the Bylaws, or by law.

Section 5. Association Acts Through Its Board of Directors. Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the Members of the Association or the Owners of Lots must vote. No member of the Board of Directors of the Association or any officer of the Association (including, without limitation, any such individual who shall have been appointed by Declarant during the Declarant Control Period, as such term is defined in the Bylaws) shall be personally liable to any Owner of any Lot for any mistake of judgment or for any other act or omission of any nature whatsoever, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud.

Section 6. Professional Management. The Association may, but shall not be obligated to, obtain and pay for the services of any Person or other entity to manage the affairs of the Association, or any part thereof, as the Board of Directors deems to be in the best interests of the Association.

ARTICLE VI. ASSESSMENTS AND OTHER CHARGES

Section 1. Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance for a Lot, covenants and agrees to pay to the Association all assessments and charges which are levied by the Association against the Lot(s) owned by such person in accordance with the terms and provisions of this Declaration, the Bylaws, and any rules and regulations of the Board of the Directors promulgated hereunder.

All sums lawfully assessed by the Association against any Lot and the Owner thereof, together with interest thereon, late fees in the amount of 18% of the sums owed or \$10.00, whichever is higher, and all costs of collection thereof, shall, from the time the sums become due and payable, be the personal obligation of the Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns, of such Lot and constitute a continuing lien in favor of the Association on such Lot prior and superior to all other liens whatsoever except: (1) Liens for ad valorem taxes on the Lot; (2) The lien of any Mortgage covering the Lot and the lien of any Mortgage recorded prior to the recording of this Declaration; and (3) The lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee nor any successor grantee of such mortgage is the seller of the Lot. The covenant to pay assessments herein stated is and shall be a covenant running with the land.

Section 2. Purposes of Assessments and Charges. The assessments and charges levied by the Association pursuant to this Article shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to this Declaration, the Articles of Incorporation and the Bylaws, the Easement Agreements, and for such other purposes as the Board of Directors shall deem necessary or desirable to promote the health, safety and welfare of the Association and its Members. The costs and expenses collected on an annual basis are herein referred to as the "Annual Expenses."

Section 3. Determination of Annual Assessment and Shares Thereof. Prior to the commencement of each fiscal year of the Association or at any time it deems best (said fiscal year being specified in the Bylaws), the Board of Directors shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the

Association's expenditures and reserves based upon such estimate and providing for the total annual assessment to be levied against the Members of the Association for such fiscal year (the total assessment which shall be so determined and levied for any fiscal year is herein referred to as the "Annual Assessment"). The assessments provided for herein shall commence as to a Lot on the date that a Lot becomes an Improved Lot, with all Improved Lots being assessed equally, except as may be specifically set forth otherwise herein. No Annual Assessment shall be assessed against any Lot owned by Declarant or a Primary Builder or against any Lot while it is being used as a Model Home, unless required as a matter of law or by separate agreement with Declarant or a Primary Builder. The Board of Directors shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Lot, to the Owner of every Lot. The amount of such Annual Assessment which shall be levied against each Lot shall be due and payable to the Association in such installments as the Board of Directors shall determine (for example, monthly, quarterly or annually) and shall be paid to the Association when due without further notice.

Section 4. Special Assessments. If for any reason, including non-payment of any assessments to the Association by the persons liable therefor, the budget adopted by the Board of Directors for any fiscal year shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Board of Directors shall determine that it is in the best interests of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Board of Directors shall have the authority to levy a special assessment against the Lots and the Owners thereof to raise such needed funds. Any special assessment levied by the Board of Directors pursuant to the provisions of this section shall be payable at such times and such installments as the Board of Directors shall determine. Each Improved Lot shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this section; provided that in no event shall Declarant or Primary Builder be obligated to pay any special assessment.

Section 5. Specific Assessments. The Board of Directors may levy specific assessments against individual Owners (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, or of any monument, landscaping, detention pond, amenity or other thing maintained by the Association, which is occasioned by the act(s) of individual Owner(s) and not the result of ordinary wear and tear, (ii) for the payment of fines, penalties or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws, or any rules or regulations promulgated hereunder; or (iii) for any common expenses, other than expenses for the maintenance of the Common Areas, which benefit less than all of the Lots or which significantly disproportionately benefit all Lots (which expenses may be specially assessed equitably among all of the Lots benefited according to the benefit received); provided that in no event shall Declarant or Primary Builder be obligated to pay any specific assessment, nor shall a specific assessment be assessed against any Lot while it is being used as a Model Home. Failure of the Board of Directors to exercise its authority under this section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board of Directors' right to exercise its authority under this section in the future with respect to any expenses.

Upon the establishment of a specific assessment under this section, the Board of Directors shall send written notice of the amount and due date of such specific assessment to the affected Owner(s) at least thirty (30) days prior to the date such specific assessment is due.

Section 6. Suspension of Services and Utilities Provided by Association. In the event any assessment, fine or other charge, or any portion or installment thereof, is delinquent for ninety (90) days or more, in addition to all other rights provided in this Declaration, the Association shall have the right, upon ten (10) days written notice, or in accordance with the suspension standards and notice requirements imposed on the institutional providers providing such services to the Property, if any, to suspend any utility or service, the cost of which is paid for by the Association as a common expense, which shall include, without limitation, water service provided to a Lot, until such time as the delinquent assessments and all costs permitted under this Section, including, without limitation, reasonable attorneys' fees actually incurred and any reasonable utility provider charges or other reasonable costs incurred in suspending and/or restoring such utility service or other services, are paid in full. Said utility services shall not be required to be restored until such delinquent assessments and costs, including, without limitation, any reasonable utility provider charges or other reasonable costs incurred in suspending and/or restoring such services, are paid in full. Any Owner whose utility or service has been suspended shall not be entitled to use any such utility or service paid for as a common

expense from any source and any such unauthorized use shall be considered a theft of services under O.C.G.A. Section 16-8-5. All Association expenses for terminating and/or restoring any services pursuant to this Section, including reasonable attorneys' fees actually incurred, shall be a specific assessment and shall be collected as provided herein for the collection of assessments.

The notice requirement of this Section shall be deemed complied with if the notice is sent by certified mail, return receipt requested, to the address of the Lot and to any other address the Owner of the Lot has designated in writing to the Association. Enforcement under this Section is not dependent upon or related to other restrictions and/or other actions, except as provided herein.

Section 7. Special Assessment for Working Capital Reserve. Upon the first transfer of title to an Improved Lot (or, in the case of a Model Home, the thirtieth (30th) day after the Lot ceases to be used as a Model Home) and upon each resale of an Improved Lot thereafter, there shall be levied against such Improved Lot and paid to the Association a special assessment as set from time to time by Declarant or the Board of Directors of the Association. Declarant (or Builder, if the Lot is owned by a Builder) shall endeavor to collect such special assessment at the closing of the initial purchase of the Improved Lot; however, the failure to collect such special assessment at that time shall not excuse the obligation to make such payment. Neither Declarant nor a Builder shall be liable for the payment of such special assessment.

Section 8. Effect of Non-Payment of Assessments, Charges or other Fees; Remedies of the Association.

(a) In the event that any Member of the Association shall fail to pay, within ten (10) days after the date the same is due and payable, any annual, special, or specific assessment, or any installment of any such assessments which is payable by him to the Association, or any charges, fees or other such sums which may be due to the Association, the entire amount of such assessment or sum, including the portion thereof which would otherwise be payable in installments, may be declared by the Board of Directors to be immediately due and payable in full to the Association. All such amounts so declared by the Board of Directors to be due and payable in full to the Association shall be secured by the lien of the Association on every Lot owned by the delinquent Member, which lien shall bind such Lot or Lots in the hands of the then Owner, and his heirs, devisees, successors and assigns. The Association may, but shall not be obligated to, file a notice of lien in the land records of the county where the Lot is located. In addition to the lien rights, the personal obligation of the then Owner to pay such sums shall remain his personal obligation and shall also pass to his successors in title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which said Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors in title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and successors in title creating any indemnification of the Owner or any relationship of principal and surety as between themselves.

(b) All amounts which the Board of Directors shall declare to be due and payable pursuant to this section shall be subject to late fees in the amount of 18% of the sums owed or \$10.00, whichever is higher, and shall bear interest from the date of delinquency at the lower of the rate of ten (18%) percent per annum or the highest rate permitted by law. The Association may bring legal action against the Member of the Association personally obligated to pay the same, or foreclose its lien upon the Lot or Lots of such Member, in either of which events such Member shall also be liable to the Association for all costs and all actual attorneys' fees which the Association shall incur in connection with the collection of such delinquent amounts and in accordance with O.C.G.A. 44-5-60.

Section 9. Budget Deficits during Declarant Control Period. Declarant may advance funds to the Association sufficient to satisfy the deficit, if any, in any fiscal year between the actual operating expenses of the Association (exclusive of any allocation for capital reserves) and the annual and special assessments for such fiscal year. Such advances shall be evidenced by promissory notes from the Association in favor of the Declarant and shall be paid back to Declarant if and to the extent that sufficient funds are generated by assessments in future years.

Section 10. Failure to Assess. The failure of the Board of Directors to fix the assessment amounts, to deliver to each Owner an assessment notice, or to collect any sums due shall not be deemed a waiver, modification or release of any Owner of the obligation to pay assessments or any other sums due the Association. In the event of any assessments owed, each Owner shall continue to pay assessments on the same basis as for the last year for which an

assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

ARTICLE VII. ARCHITECTURAL CONTROL

Section 1. Architectural Approvals and Restrictions. No Exterior Structure or Improvement, as defined herein and including, but not limited to fencing, shall be placed, constructed, erected, installed or made on any Lot unless such Exterior Structure or Improvement meets all zoning requirements and square footage and other requirements that may be set forth in the Plats and is in strict compliance with the provisions of this article.

Section 2. Architectural Control Committee. Responsibility for the review of all applications under this Article shall be handled by the Architectural Control Committee ("ACC"), the members of which need not be Members of the Association and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Association. The ACC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ACC in having any application reviewed by architects, engineers or other professionals.

The ACC shall have exclusive jurisdiction over all construction, alterations or additions on any portion of the Property and shall be the sole arbiter of applications and may withhold approval for any reason, including, without limitation, purely aesthetic considerations. The ACC shall have the right, but not the obligation, to promulgate written design guidelines and standards for the Property in order to provide guidance to Owners and Builders regarding the approval process, which guidelines and standards may be amended by the ACC at any time and from time to time. Declarant may prepare the initial design and development guidelines and application and review procedures that shall be applicable to all construction activities within the Property. Compliance with such guidelines and standards shall not guarantee approval of any application.

Until the termination of the Development Period, Declarant retains the right to appoint all members of the ACC, who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board of Directors shall appoint the members of the ACC, who shall thereafter serve and may be removed in the Board of Directors' discretion.

Section 3. Exterior Structure or Improvement. The term "Exterior Structure or Improvement" shall mean an exterior construction, alteration, addition or change of any nature whatsoever on a Lot [including but not limited to (i) a building, fence, wall, patio, dog house, playhouse, playground equipment, swimming pool, spa, Jacuzzi, or other structure, (ii) staking, clearing, excavation, grading, or filling of land, (iii) change in color, type or material of any existing improvement, (iv) planting or removal of landscaping materials (v) placement or installation of exterior lighting, statuary, flags, flagpoles, fountains and similar items, (vi) modification of the interior of a porch, deck, patio or similar portion of a structure which is visible from outside the Lot, or (vii) the addition of storm or screen doors or windows]. No Exterior Structure or Improvement shall be commenced, placed or maintained upon any Lot until complete and final plans and specifications setting forth the information hereinafter described shall have been submitted to and approved by the ACC as to the harmony of the exterior design and general quality with the existing standards of the improvements located on the other Lots, and as to location in relation to surrounding structures and topography.

Section 4. Approval Procedures. The plans and specifications which must be submitted to the ACC prior to the commencement of any such work upon any Lot, as hereinabove provided, shall contain at least the nature, kind, shape, height, materials, color, texture and location of such structure, alteration or landscaping, the distance from the closest Lot boundary line(s) and such other information as the ACC may reasonably request in order to render a decision. Notwithstanding the above, however, the ACC, by resolution, may exempt certain activities from the application and approval requirements of this Article, provided that such activities are undertaken in strict compliance with the requirements of such resolution.

In the event that the ACC fails to approve or disapprove any application within thirty (30) days after submission of all information and materials reasonably requested by the Association, the application shall be deemed approved.

The ACC shall, upon demand, furnish to any Member of the Association a certificate in writing signed by a member of the ACC, stating that any Exterior Structure or Improvement that has been approved and built in accordance with the provisions of this section is in compliance with the provisions of this section, and such certificate shall be conclusive as to whether the same is in such compliance.

Section 5. Construction Period. Unless otherwise agreed to in writing by the ACC, any Exterior Structure or Improvement must be commenced within 30 days after ACC approval of the plans and specifications for same. After commencement of construction, the Owner or Builder shall diligently continue construction to completion in a timely manner and within the time limits and in the manner specified by the ACC at the time the project is approved.

Section 6. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Section 7. Variance. The ACC, in its sole discretion, may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall (i) be effective unless in writing; (ii) be contrary to this Declaration; or (iii) prevent the ACC from denying a variance in other circumstances.

Section 8. Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property only, and shall not create any duty to any Person. Neither the Declarant, the Association, nor the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, or for ensuring compliance with building codes and other governmental requirements or regulations. Neither Declarant, the Association, the ACC, nor any member of any of the foregoing, shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the Declarant, ACC and its members shall be defended and indemnified by the Association as provided in this Declaration and the Articles of Incorporation and Bylaws of the Association as though they were officers of the Association.

Section 9. Enforcement. Declarant, any member of the ACC, the Board of Directors, or the representatives of each, shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether any Exterior Structure or Improvement is in violation of this Article. Any Exterior Structure or Improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request by the ACC, the Owner shall, at its own cost and expense, remove such structure or improvement and restore the Lot to substantially the same condition as existed prior to the nonconforming work. Upon the failure or refusal of any person to perform the restoration required herein, the ACC, or their authorized agents or employees, may, after fourteen (14) days' notice to such person, enter upon the property upon which such unauthorized work has been performed, and make such restoration as the ACC, in the exercise of its discretion, may deem necessary or advisable. Entry for such purposes and in compliance with this Section shall not constitute a trespass. The person upon whose Lot such restoration work shall have been so performed shall be personally liable to the Association for all direct and indirect costs which the Association shall incur in the performance of such restoration work, including without limitation attorneys' fees, and the liability for such cost shall be secured by all the liens, and shall be subject to the same means of collection, as the assessments provided for in this Declaration. Such costs shall be paid to the Association by the person liable for the same at the same time as the next due Annual Assessment payment, or at such earlier time, and in such installments, as the ACC shall determine.

Unless otherwise specified in writing by the ACC, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to

the same Lot, unless approval to modify any application has been obtained. In the event that any person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a specific assessment pursuant to this Declaration.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ACC.

Section 10. Declarant and Primary Builder Exemption. Notwithstanding anything stated to the contrary herein, nothing contained in this Article shall be construed as prohibiting any construction, alteration, addition or removal by the Declarant or Primary Builder upon any Lot while such Lot is owned by the Declarant or Primary Builder. Any construction, alteration, addition or removal performed by the Declarant or Primary Builder or, with Declarant's consent, by any other Builder, upon any Lot while such Lot is owned by the Declarant, Primary Builder or such other Builder shall be exempt from the provisions of this Article.

ARTICLE VIII. RESTRICTIONS

In order to provide for the maximum enjoyment of the Lots by all of the residents thereof and to provide protection for the value of the same, the use of the Lots shall be restricted to, and shall be only in accordance with, the applicable zoning ordinances with respect to the Property and the following provisions:

Section 1. Residential Use. All of the Lots shall be restricted exclusively to single-family residential use. The term "single-family" shall include one or more related or unrelated adults, as well as the children of any such adults. No Lot shall at any time be used for any commercial, business or professional purpose. Notwithstanding the foregoing, however, nothing set forth in this section shall prohibit: (i) the Declarant or a Builder from conducting such sales, leasing and promotional activities on any Lot as Declarant shall determine; or (ii) the Owner of any Lot from using a portion of a building located on such Lot as an office, provided that such use does not create regular customer, client or employee traffic to and from such Lot; the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; the business activity conforms to all zoning requirements; and no sign, logo, symbol or nameplate identifying such business is displayed anywhere on such Lot.

Section 2. Prohibited Activities. No noxious, offensive, unsightly or unkempt activity shall be conducted on any Lot. Each owner of any Lot, his family, tenants, guests and invitees, shall refrain from any act or use of his property which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other resident or residents of any other Lot. Storage or placement of furniture, potted plants, fixtures, appliances, machinery, bicycles, towels, clotheslines, yard art, dog houses, equipment or other goods or chattels on any Lot which is visible from outside of the Lot (including but not limited to stoops, steps, driveways, decks and patio areas) is prohibited except as specifically permitted in this Declaration. No nuisance shall be permitted to exist upon any Lot. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot, or any portion thereof.

Section 3. Animals. No animals other than dogs, cats, aquarium fish and birds are permitted on any portion of the Property. No animal determined to be dangerous, trained to be used for protection or which has an aggressive nature, in the Board of Directors' sole and absolute discretion, may be brought onto or kept on the Property at any time. The Board of Directors' may, without notice, have removed by the appropriate animal control authority any animal that presents an immediate danger to the health, safety or property of any Person. No Owner or occupant shall keep more than four dogs or cats or combination thereof per Lot. The Board of Directors shall have the ability to make specific exceptions to the above rules on a case-by-case basis in the Board's sole and absolute discretion.

Cats may not be left or kept unattended outdoors. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors unless contained within a fenced area. No dog may be left unattended outdoors on any balcony or deck. Any feces left by an animal upon the Common Areas (including the

street) or another Owner's Lot must be removed immediately by the owner of the animal or the person responsible for the animal. No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose or keep or maintain a dog whose persistent barking causes annoyance or nuisance to any other resident of any other Lot.

Each Owner and Occupant who keeps an animal on the Property agrees to indemnify and hold the Declarant, Association and its directors, officers and agents harmless from any loss, claim or liability of any kind whatsoever arising by reason of such animal.

Section 4. Antennae; Aerials; Satellite Dishes; Other Utilities. Except as provided below, no exterior transmission antenna, receiving dish or other apparatus for receiving and/or transmitting audio or video signals may be erected or maintained upon any portion of the Property, including any Lot, without the prior written consent of the ACC.

Declarant or the Association shall have the right, without obligation, to enter into an agreement with a third-party provider to erect an aerial, satellite dish, or other apparatus of any size for a master antenna, cable, or other communication system for the benefit of all or a portion of the Property. So long as the Association does not install a centralized antenna or dish, DBS and MMDS antennas one (1) meter or less in diameter and television broadcast service antennas may be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association as authorized by the FCC, as both may be amended from time to time.

Section 5. Drainage. Catch basins, retention ponds, detention ponds, water quality ponds, drainage easement areas, storm lines and any other related drainage facility are for the purpose of controlling the natural flow of water and compliance with local ordinances and regulations only. No obstruction or debris shall be placed or allowed to remain in these areas. No Owner may obstruct or alter the drainage flows established by Declarant or Primary Builder without prior written approval in accordance with the architectural control provisions of the prior Article.

Section 6. Use of Grills and Other Such Cooking Devices. The use of grills and other such equipment such as smokers shall only be permitted in accordance with municipal, county and state ordinances and laws, as well as the requirements of the Association's insurance policies. No outdoor grills are permitted indoors or inside any garage area. Each Owner and Occupant who keeps a grill or such other cooking device on the Property agrees to indemnify and hold the Association and its directors, officers and agents harmless from any loss, claim or liability of any kind whatsoever arising by reason of such grill or cooking device.

Section 7. Leasing. In order to protect the equity of the individual Lot Owners, to preserve the character of the Property as a community of predominantly owner-occupied homes, and to comply with the zoning requirements applicable to the Property, the leasing of Improved Lots shall be governed by the restrictions imposed by this Section. **Except as provided herein, the leasing of an Improved Lot shall be prohibited.**

(a) **Definitions.** The terms "leasing", "lease" or "leased" shall mean the regular, exclusive occupancy of a home by any person(s) other than the Owner, for which the Owner receives any consideration or benefit including, but not limited to, a fee, service, or gratuity. For purposes hereof, occupancy of a Residence by the child or parent of an Owner or occupancy of a Residence by a roommate of an Owner who occupies the Residence with the Owner as a primary residence shall not constitute leasing.

(b) **General.** Any Owner of an Improved Lot may apply in writing to the Board to be a "Leasable Lot" (which shall mean an Improved Lot authorized to be leased). Upon approval of such written application, the Improved Lot shall become a Leasable Lot, so long as no more than twenty five percent (25%) of the Improved Lots are designated as Leasable Lots at any one time. If the designation of an Improved Lot as a Leasable Lot would result in more than twenty five percent (25%) of the Improved Lots being designated as Leasable Lots, such Improved Lot shall be placed at the end of a waiting list to be a Leasable Lot. At such times as less than twenty five percent (25%) of the Improved Lots are Leasable Lots, the Board shall notify the Owner of the Improved Lot at the top of the waiting list that it has become a Leasable Lot, and such Owner shall have ninety (90) days within which to lease the Improved Lot or it shall automatically revert to an Improved Lot that may not be leased. Any Leasable Lot shall automatically convert to an Improved Lot without the ability to lease if the Improved Lot is not subject to an approved lease for ninety (90) or more consecutive days.

(c) Undue Hardship. In addition to the provisions of subparagraph (b) above, so long as no more than thirty percent (30%) of all Improved Lots are leased, the Board shall be empowered to allow reasonable leasing of an Improved Lot upon application in accordance with this Paragraph to avoid undue hardship, including, but not 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 Improved Lot was placed on the market, sell the Improved Lot 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 Improved Lot is being administered by his or her estate; and (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Improved Lot, in which case the Owner must reapply every year for renewal of the hardship exception. Those Owners who have complied with this subparagraph, have demonstrated that the inability to lease their Improved Lots would result in undue hardship, and have obtained the requisite written Board approval may lease their Improved Lots for such duration as the Board reasonably determines is necessary to prevent undue hardship.

Any Owner who believes that he or she must lease his or her Improved Lot to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application. Any transaction which does not comply with this Paragraph shall be voidable at the Board's option.

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

(i) General. Leasable Lots may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing. There shall be no subleasing of Leasable Lots or assignment of leases without prior written Board approval. 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 an Improved Lot, the Owner shall provide the Board with a copy of the lease, the name and contact information of the lessee and all other people occupying the Improved Lot, and the address and contact information of the Owner. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations.

(iii) Liability for Assessments, Use of Common Elements, and Compliance with Declaration, Bylaws, and Rules and Regulations. Each Owner covenants and agrees that any lease of an Improved Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Leasable Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(aa) Compliance with Declaration, Bylaws, and Rules and Regulations. Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Leasable Lot.

(bb) Liability for Assessment. When a Lot Owner who is leasing his or her Improved Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid

at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(e) Applicability of this Section. Subsections (b) and (c) of this Section on Leasing (which limit the percentage of Lots leased) shall not apply to any leasing transaction entered into by the Declarant, a Primary Builder, the Association or the holder of any first Mortgage on an Improved Lot who becomes the Owner of an Improved Lot through foreclosure or any other means to the satisfaction of the indebtedness secured by such Mortgage.

Section 8. Energy Conservation Equipment. Except for devices installed by the Declarant, no solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless approved in accordance with the provisions of Article VIII hereof.

Section 9. Entry Features and Street Signs. Owners shall not alter, remove or add improvements to any entry features or street signs constructed or erected by the Declarant or the Association on any Lot, or any part of any easement area associated therewith, without prior approval in accordance with the provision of Article VIII hereof.

Section 10. Firearms and Fireworks. Except for the use of a firearm within a Residence in a life-threatening emergency (and then only if and to the extent permitted by and in accordance with Georgia law), the use of firearms and fireworks on the Property is strictly prohibited. The term "firearms" includes, without limitation, B-B guns, pellet guns and archery equipment.

Section 11. Lighting. Exterior lighting visible from the street shall not be permitted except for: (i) approved lighting as originally installed on a Lot; (ii) one (1) approved decorative post light; (iii) pathway lighting; (iv) street lights in conformity with an established street lighting program for the Property; (v) seasonal decorative lights; and (vi) front house illumination of Model Homes.

Section 12. Mailboxes. No change or addition, other than as approved by the Board of Directors, shall be made to the design, materials or location of the original mailboxes or mail kiosks installed by the Declarant for the benefit of the Lots.

Section 13. Signs. No sign of any kind or character shall be erected on any portion of any Lot, or displayed to the public on any portion of any Lot, without the prior written consent of the Board of Directors, except for customary professionally lettered name and address signs, one customary professionally lettered "for sale" sign advertising a Lot for sale, any sign required by legal proceedings, and except for any signs which may be erected by Declarant related to the development and sale of Lots. The restriction herein stated shall include the prohibition of placement of any sign within a building located on any Improved Lot in a location from which the same shall be visible from the outside, and the placement of any sign in or upon any motor vehicle.

Section 14. Stoops, Driveways, Decks and Patio Areas. Patio furniture, potted plants and other items may be permitted on decks, patios, front stoops, front steps, front walks, driveways and other areas subject to local ordinances and any restrictions and rules promulgated by the Association with respect thereto.

Detached storage buildings, sheds or animal pens are prohibited. If any area under a deck attached to a home is used for storage (such as for garden equipment, etc.), such area and storage must be screened from view of other Lots and any street and must be approved in accordance with the architectural control provisions of the prior Article.

Section 15. Trash, Rubbish and Garbage. No garbage or trash shall be placed or kept on the Property except in sealed bags placed in proper containers of a type, size and style which are approved by the Board of Directors or as required by the applicable governing jurisdiction, and subject to rules promulgated by the Association. No person shall burn rubbish, garbage or any other form of solid waste on any Lot or on Common Areas or within the right of way of any street within the Property. All garbage receptacles shall be stored out of sight at all times, or shall be placed in the common dumpster provided by the Association on the Common Area for that purpose. The placement of oversized items such as furniture or anything other than standard household waste in the dumpster(s) shall be strictly

prohibited. The above provisions in this Section are not applicable to construction debris, rubbish, garbage or any other form of solid waste of the Declarant or its affiliates; provided, however, all such construction debris, rubbish, garbage or any other form of solid waste shall be regularly removed and shall not be allowed to unreasonably accumulate.

Section 16. Trees. No healthy living tree having a diameter of six (6) inches or more measured from a point two (2) feet above the ground, and no flowering tree, shrub, evergreen, or natural ground cover, shall be removed after the Lot is an Improved Lot, unless such removal is approved by the ACC.

Section 17. Vehicles and Parking. The Association shall have the right to promulgate rules regulating the use of all streets and parking on the Property. The term "vehicles" as used in this section shall include without limitation automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles. No vehicle may be left upon any portion of the Property except upon a driveway, a designated parking space or within a garage. No person shall park any commercial vehicle (including but not limited to any type of vehicle with advertising or lettering), recreational vehicle, mobile home, trailer, camper, boat or other watercraft, or other oversized vehicle, stored vehicle or unlicensed or inoperable vehicle within the Property, with the exception of emergency vehicle repairs or commercial vehicles which are temporarily parked for the purpose of servicing a Lot or the Property. If any vehicle is parked on any portion of the Property in violation of this section or in violation of the Association's rules and regulations, the Board, in accordance with the requirements of applicable law, may cause the towing or booting of the vehicle and neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of such towing or booting activity. Except as set forth below, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot. Nothing contained in this section, however, shall (i) prohibit the Declarant, a Primary Builder or a Builder from parking vehicles on the Property which are reasonably necessary or desirable to perform construction activities on their respective Lot(s) or pursuant to any easement applicable to the Property or (ii) permit the Board to impose fines or other sanctions or tow or boot such vehicles.

Without limiting the generality of the foregoing paragraph, golf carts, electric scooters and electric bikes are specifically included within the term "vehicle" as used in this section. The Association's right to promulgate rules regulating the use of the streets and parking within the community specifically includes the right of the Association to promulgate rules regarding whether or not golf carts, electric scooters, and electric bikes can be operated on the streets within the community and, if permitted, the terms and conditions of such operation.

All Owner and occupant vehicles must be kept and stored when not in use within the Improved Lot's garage space or driveway. Garages shall be used primarily for the parking of vehicles and not for storage or for any other purpose and garage doors must remain closed at all times except for entry and exit by vehicles and except for such periods as are necessary for the conduct of homeowner related maintenance activities.

If any vehicle is parked on any portion of the Property in violation of this section or in violation of the Association's rules and regulations, the Board (or its agent) may place a notice on the vehicle specifying the nature of the violation and stating that, after twenty-four (24) hours, the vehicle may be towed. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within twelve (12) months of such notice, the Board (or its agent) may have the vehicle towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle, is obstructing the flow of traffic, is parked in an area other than a garage, driveway or designated parking space, or otherwise creates a hazardous condition, no notice shall be required by the Board (or its agent) and the Board (or its agent) may have the vehicle towed immediately.

Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions such as booting, rather than exercise its authority to tow, but if a vehicle is towed or booted in accordance with this section, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as the result of such towing or booting activity. Nothing contained in this section, however, shall (i) prohibit the Declarant, a Primary Builder or a Builder from parking vehicles on the Property which are reasonably

necessary or desirable to perform construction activities on their respective Lot(s) or pursuant to any easement applicable to the Property or (ii) permit the Board to impose fines or other sanctions or tow or boot such vehicles.

All vehicular traffic on any private streets in the Property shall be subject to the provisions of state and local laws concerning the operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including, without limitation, imposing reasonable safety measures and speed limits. The Association shall be entitled to enforce the same by establishing such enforcement procedures as it deems appropriate, including levying and collecting fines for the violations thereof. In the event of a conflict between the provisions of state and local laws and the rules and regulations promulgated by the Association, the more restrictive rule or regulation shall govern. Only drivers properly licensed to operate motor vehicles on the public roads within the State of Georgia may operate any type of motor vehicle on the private streets within the Property. All vehicles of any kind and nature which are operated on the private streets in the Property shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all Owners and occupants.

Section 18. Window Air-Conditioners. No air-conditioner shall be installed in any window of any building located on any Improved Lot, nor shall any air-conditioner be installed on any building located on any Improved Lot so that the same protrudes through any exterior wall of such building.

Section 19. Window Treatments. Except as may be otherwise approved in accordance with the Architectural Control provisions contained in the previous Article, all window treatments visible from the outside of an Improved Lot shall be white or off-white in color. No bed sheets, newspaper, tin foil, or similar materials may be used as window treatments.

Section 20. No Subdividing of Lots or Timesharing. No Lot may be further subdivided into any smaller Lot. No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 21. No Combination of Lots. Contiguous Lots may not be combined together without the prior written consent of the Board of Directors. In the event that the Board of Directors does approve such a combination, such combination shall thereafter be deemed to be a single Lot for all purposes of this Declaration, except that notwithstanding the foregoing, the amount of assessments for which such single Lot shall be thereafter liable shall be equal to the total assessments for which all of the Lots which were so combined would have been liable had such combination not taken place.

Section 22. Development Period. During the Development Period, no amendment to or modification of any use restrictions, rules or design guidelines shall be adopted without the prior written consent and approval of Declarant. The Association shall not exercise any authority that would impair the rights of the Declarant under this Declaration or interfere with Declarant's or Primary Builder's development of, construction on, or marketing of any portion of the Property or the Additional Property, or diminish the level of services being provided by the Association. Notwithstanding the provisions of Sections 20 and 21 above, and provided that any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, Declarant hereby expressly reserves the right to subdivide, combine, change the dimensions of and/or replat any Lot, Lots or other real property owned by Declarant during the Development Period.

Section 23. Interpretation. In all cases, the covenants and restrictions herein contained shall be construed and interpreted in a manner which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development and maintenance herein set forth. Subject to the terms of this Article and the Board of Directors' duty to exercise business judgment and reasonableness, the Board of Directors may modify, cancel, limit, create exceptions to, or expand the restrictions contained herein and may create, modify and enforce reasonable rules governing the use of the Property consistent with the law and with other provisions in this Declaration. The Board of Directors shall send notice to all Owners concerning any new or amended restrictions or rules prior to the date that such restrictions or rules go into effect. For this purpose, notice may be sent to each Owner by U.S. mail, hand delivery, electronic telecommunication or publication in a community notice or newsletter delivered or mailed to each Owner.

ARTICLE IX.
MAINTENANCE RESPONSIBILITIES

Section 1. Association's Maintenance Responsibility. Except as may be specifically provided otherwise below, the Association shall maintain the Area of Common Responsibility (whether or not constituting Common Areas), including: (i) all entrance gates (if any) and entry features to the Property, including any electrical and irrigation systems serving the entry features; (ii) all private streets, alleys, parking areas (other than driveways) and sidewalks paralleling streets (but not front walks leading from a sidewalk or driveway to a homeowner's front stoop or front steps); (iii) all perimeter fencing, retaining walls and landscaping around the boundaries of the Property and the Areas of Common Responsibility, if any (provided that in no event shall the Association be responsible for the maintenance of any fencing installed by, or at the request of, an Owner); (iv) all entrance landscaping and landscaping within public rights-of-way abutting the Property; (v) all storm water detention or drainage facilities serving the Property, including, but not limited to, any obligations set forth in that certain Stormwater Management Facility Inspection and Maintenance/Indemnification Agreements recorded in Deed Book_____, page _____, Deed Fulton County, Georgia records, and the Association shall indemnify PARK AT MONROE, LLC, a Georgia Limited Liability Company, its successors and a/or assigns from any cost or damages caused by the Association's failure to do so; (vi) all Amenities, including the recreational facilities and open space; (vii) all property outside of Lots located within the Property which was originally maintained by Declarant or its affiliates; (viii) sanitation removal, if not provided as a city or county service; (ix) mail kiosk areas; and (x) the Association shall be responsible for and enjoy all rights and responsibilities of Grantee under that certain Access and Utility Easement Agreement recorded in Deed Book_____, Page_____, aforesaid records as set forth in Section 9 thereof.

The Association may be relieved of all or any portion of its maintenance responsibilities to the extent that such property is dedicated to any local, state or federal government or quasi-governmental entity and said entity accepts the responsibility for maintenance. In the event of any such assumption, assignment or dedication, however, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board of Directors determines that such maintenance is desirable or necessary to maintain the Community Wide Standards.

All landscaping and maintenance obligations of the Association under this Article shall be performed in such manner and on such timetable as is necessary or desirable to maintain the Community Wide Standards. The Board of Directors, in its sole discretion, may leave portions of the Property as undisturbed natural areas and may change the landscaping on the Area of Common Responsibility at any time and from time to time, including the adding or modifying of landscaping improvements, such as the planting of seasonal flowers.

In the event that the Association determines that any maintenance which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or the occupant, family, guest, invitee or lessee of an Owner, then the Association may perform such maintenance and all costs thereof may be assessed against the Owner as a specific assessment.

Section 2. Owner Maintenance Responsibility. Except to the extent that responsibility is assumed by the Association (in Section 1 above or Section 3 below), each Owner shall maintain and keep in good repair all structures and improvements on his/her Improved Lot, including but not limited to the foundation, rooftop access points or improvements, driveway, front stoop, windows, exterior painting, and all grass, trees, flowers, shrubbery and bushes, in a manner consistent with the Community-Wide Standards, this Declaration, and all other governing documents. Owner shall keep his/her Lot free from all litter, trash and refuse, keep improvements in good repair, and comply with all governmental health and police regulations.

The Owner of a Lot shall specifically be responsible for the following: (i) replacement of any dead vegetation; and (ii) removal of any tree or other landscaping that, in the opinion of the Board of Directors, could affect the structural integrity of any improvement or cause any utility lines to be compromised.

In the event the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance of items for which such Owner is responsible, the

Association shall, except in emergency situations, give the Owner written notice of the Association's intent to provide such necessary maintenance at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, or in the event that such maintenance is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions herein, the Association may provide such maintenance and all costs thereof shall be assessed against the Owner as a specific assessment. Notwithstanding anything to the contrary contained herein, however, the Association shall not be authorized to exercise self-help and enter upon any Lot owned by a Primary Builder to correct or remedy any deficiency with a structure or improvement located thereon.

Section 3. Maintenance. The Association shall maintain the landscaping on each Lot, which landscaping maintenance shall consist of and be limited to the following: (i) regular mowing and edging of the grass; (ii) the pruning and trimming of the bushes and shrubs that were originally installed by the Builder; (iii) the yearly replacement of pine straw; and (iv) the adjustment, setting, maintenance, repair and winterization of the irrigation system (if any) and its automatic timers.

Additionally, the Association shall maintain termite and wood-infestation treatment and bond on each Townhome, and shall maintain the roof, siding, fascia, front stoop and gutters and provide periodic exterior painting. The Owner of a Townhome shall be responsible for the maintenance and repair of all other structural elements and improvements whatsoever on the Lot, including but not limited to the driveway, front steps, front walk, windows, decks, and, if applicable, patio area. All obligations of the Owner hereunder shall be carried out in accordance with the provisions of Section 2 above.

Section 4. Party Walls, Fences, Stoops and Steps. Each wall, fence, front stoop, front steps, or front walk built as part of the original construction of the Townhome which serves and/or separates any two adjoining Townhomes shall constitute a party facility and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party facility shall be shared by the Owners who make use of the party facility in equal proportions. If a party facility is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the party facility may restore it, and the other Owner who is benefited by the party facility shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

Section 5. Damage or Destruction. In the event of the occurrence of any damage or destruction by fire or other casualty to the improvements on an Improved Lot, such damage or destruction shall be repaired or rebuilt, as applicable, in all events. All repair, reconstruction or rebuilding of the improvements shall be substantially in accordance with the plans and specifications for such damaged or destroyed Improved Lot immediately prior to the occurrence of such damage, or in accordance with such differing plans and specifications as are approved for such purpose by the Owner of such Improved Lot and the Board of Directors. The Owner of such damaged or destroyed Improved Lot shall be responsible for ensuring that the work of repairing, reconstructing or rebuilding a damaged or destroyed Improved Lot is completed as soon after the occurrence of such damaged or destruction as is reasonably practicable, at no cost or expense to the Association.

ARTICLE X. INSURANCE

Section 1. Insurance on Common Areas. The Association shall obtain and maintain casualty insurance for all insurable improvements, whether or not located on the Common Areas, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy with a combined single limit of at least One Million Dollars (\$1,000,000.00) per occurrence applicable to the Common Areas covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as

determined by the Board of Directors. In addition, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on all persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage may contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

Section 2. Insurance on Townhomes. To the extent available at reasonable cost, the Association shall maintain as an Association expense insurance on the Townhomes commonly known as "master condominium/townhome insurance", which insurance may cover the following property, regardless of ownership: the roofs, exterior shells of the buildings, fixtures, improvements and alterations that are part of the buildings and Townhomes as built to the specifications of the original sales contract for each of such Townhomes, and the front stoops, front steps, decks, driveways and patio areas. As determined by the Board of Directors in its sole discretion, the Association's insurance policy may exclude the following: (a) improvements and betterments made by an Owner; (b) the finished surfaces of perimeter and partition walls, floors, and ceilings within the finished home (i.e., paint, wallpaper, paneling, tile, carpet and other wall or floor covering not part of the original sales contract for such Townhome); and (c) structures covered by builder's risk insurance.

All insurance purchased by the Association pursuant to this Paragraph shall run to the benefit of the Association, the Board of Directors, all officers, agents and employees of the Association, the Owners, and their respective Mortgagees, and all other persons entitled to occupy any Townhome, as their interests may appear, and the cost of such insurance shall be part of the annual assessment.. The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

The Board of Directors shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs and each Owner shall have the right to obtain additional coverage at his or her own expense.

Section 3. Individual Insurance. Each Owner, by virtue of taking title to a Lot subject to this Declaration, acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots except as set forth in Section 2 above and each Owner covenants and agrees with all other Owners and with the Association that each Owner will maintain at all times all-risk casualty insurance on the Lot and all structures constructed thereon, as well as a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of a covered item in the event of damage or destruction from any such hazard.

The Board of Directors has the right, but not the obligation, to require the Owner to furnish a copy of such insurance policy or policies to the Association. In the event that any such Owner fails to obtain insurance as required by this section, the Association has the right, but not the obligation, to purchase such insurance on behalf of the Owner and to assess the cost thereof to the Owner, to be collected in the manner provided for collection of assessments herein.

Section 4. Additional Insurance Requirements. The Board of Directors shall utilize reasonable efforts to include the following provisions in the policies that the Association obtains:

- (i) waiver of the insurer's rights of subrogation of any claims against directors, officers, employees, the managing agent, the individual Owners, occupants, and their invitees;
- (ii) an inflation guard endorsement;
- (iv) any Insurance Trust Agreement will be recognized;
- (v) any "other insurance" clause contained in the master townhome policy shall expressly exclude individual Owners' policies from its operation;

(vi) the master townhome policy shall be primary, even if a Lot Owner has other insurance that covers the same loss; and

(vii) the master townhome policy may not be canceled, substantially modified, or subject to non-renewal without at least thirty (30) days prior notice in writing to the Board of Directors and all Mortgagees of Lots.

All policies of insurance shall be written with a company licensed to do business in the State of Georgia, and, if reasonably available, shall carry a "B+" or better rating from A. M. Best Company. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

Nothing contained herein gives any Owner or other party a priority over the rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Lot on which there is a Mortgagee endorsement shall be disbursed jointly to such Lot Owner and the Mortgagee and shall be used for the repair or rebuilding of the improvements on the Lot. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Lot or a Lot and the Common Areas, the cost of the deductible may be apportioned equitably by the Board of Directors among the parties suffering loss in proportion to each affected Owner's portion of the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Lot separately or to each occurrence, each Lot Owner shall be responsible for paying the deductible pertaining to his or her Lot, if any. If any Owner or Owners fail to pay the deductible when required under this subparagraph, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to the terms of this Declaration.

Additionally, the Association shall obtain such insurance coverage as is necessary to satisfy the requirements of state law, the Federal Home Loan Mortgage Corporation, Fannie Mae, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, if and to the extent applicable to the Property.

Nothing contained herein requires the Association to make a claim under the insurance policies upon the occurrence of an insured event. The Association has the right to exercise reasonable business judgment in all insurance decisions.

ARTICLE XI. MORTGAGEE PROVISIONS

Section 1. Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Improved Lot number, shall be known as an "Eligible Holder"), will be entitled to timely written notice of: (i) any condemnation loss of any casualty loss which affects a material portion of the Property or which affects any Improved Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Holder; (ii) any delinquency in the payment of assessments or charges owed by an Owner of an Improved Lot subject to the Mortgage of such Eligible Holder where such delinquency has continued for a period of sixty (60) days; (iii) any default in the performance by the Owner of the encumbered Improved Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (iv) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

Section 2. Audit. Upon written request of an Eligible Holder of a Mortgage and upon payment of all necessary costs, such Eligible Holder shall be entitled to receive a copy of audited financial statements of the Association within ninety (90) days of the date of the request.

Section 3. No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Improved Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards.

Section 4. Failure of Mortgagee to Respond. Except as set forth below, any Mortgagee who receives a written request from the Board of Directors 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, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested. Notwithstanding the foregoing, no lender of any Mortgage recorded prior to the recording of this Declaration shall be deemed to have approved any action unless and until such lender gives its consent thereto in writing.

ARTICLE XII AMENDMENT

Except as otherwise specifically set forth below, or as provided by applicable law, until the termination of the Development Period, the Declaration may be amended only by Declarant, who may unilaterally amend this Declaration for any purpose.

After the termination of the Development Period, this Declaration may be amended only upon the affirmative vote or written consent, or any combination thereof, of two-thirds (2/3) of the Lot Owners. Notwithstanding the foregoing, after the termination of the Development Period, the Board of Directors, without the vote of the Members, may amend this Declaration for the sole purpose of electing to be governed by the provisions of the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.*

Notwithstanding anything contained above, however, any amendment that would revoke or remove a designation as a Primary Builder or change, alter, modify or extinguish any right, covenant or obligation of a Primary Builder as set forth in this Declaration shall also require the prior written consent of the affected Primary Builder for so long as any such Primary Builder owns any portion of the Property.

Any amendment shall become effective upon the recording with the County Clerk of the instrument evidencing such change unless a later effective date is specified therein. If an Owner consents to an amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any procedural challenge to an amendment must be made within six months of the recording of the amendment or such amendment shall be presumed to have been validly adopted.

Every Owner, by taking record title to a Lot, and each holder of a Mortgage upon any portion of any Lot, by acceptance of such Mortgage, hereby agrees that the terms, provisions, covenants and restrictions of this Declaration may be amended as provided herein.

ARTICLE XIII. MISCELLANEOUS

Section 1. Failure of Enforcement. In the event that the Association shall fail to enforce the compliance with any of the provisions of this Declaration by the Owner of any Lot, then the Owner of any other Lot shall have the right to file an action in the Superior Court of the county where the Property is located for an order from such Court requiring that the Association enforce such compliance; provided, however, in no event shall the Board of Directors, or any officer of the Association, or any of their agents, be personally liable to anyone on account of their failure to enforce any of the terms, provisions or restrictions set forth in this Declaration.

Section 2. No Waivers. In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision, or agreement. The acceptance of performance of anything required to be performed with

knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

Section 3. Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Property. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. 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. Each Owner further acknowledges that the Declarant will not be responsible or liable for any loss or damage resulting from any gates or entrances (if any) being open to allow access for construction vehicles, work crews and sales activities.

Each Owner or Occupant understands and acknowledges that the entrance gates (if any) will remain open during the Development Period and may or may not be manned. Any decision to man any entrance gates or to discontinue the manning of the entrance gates shall be made by the Association in its sole and absolute discretion and neither the Association nor the Declarant will be responsible or liable for any loss, damage or injury to person or property within the Property regardless of such decisions.

Additionally, neither the Declarant nor the Association shall be held liable for loss or damage to any property, including but not limited to any vehicle and any items in any vehicles, placed or kept in any parking area on the Property. Each Owner or Occupant who places or keeps a vehicle and/or any personal property in a vehicle or parking area does so at his or her own risk.

Section 4. Duration. This Declaration, and all of the terms, easements, provisions, liens, charges, restrictions and covenants set forth herein, shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from and after the date this Declaration is recorded, after which time such covenants and restrictions shall be automatically extended for successive periods of twenty (20) years until the recordation of an instrument of termination within two (2) years of the expiration of the initial twenty-year period or any extension thereof, such instrument having been executed by a minimum of fifty-one percent (51%) of the record Owners of the Lots and otherwise complying with the applicable requirements of O.C.G.A. §44-5-60.

Section 5. Notices. Any notice required or permitted to be sent to any Member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the Member or Owner to whom it is intended, at the address which such Member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of the Lot owned by such Member. The date of service shall be the date of mailing. The address of Declarant or the Association shall be the address of its respective registered agent on file with the Secretary of State of Georgia. The date of service shall be the date shown on the return receipt. Rejection or other refusal to accept shall be deemed to be receipt of the notice sent.

Section 6. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 7. Dispute Resolution and Limitation on Litigation.

Declarant, Lot Owners, Occupants, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (individually, "Bound Party", and collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage a resolution of disputes involving the Association and this Declaration without the emotional and financial costs of litigation. Therefore, the Bound Parties agree to the following dispute resolution procedures.

(a) Claims. Unless specifically exempted below, the term “Claim” shall refer to any claim, grievance, or dispute arising out of or relating to the interpretation, application, or enforcement of the Governing Documents or the rights, obligations, and duties of any Bound Party under this Declaration, except for a Construction Defect Claim, as defined in Section 7(f) below. Additionally, the following shall not constitute a Claim and shall not be subject to the provisions of this Section:

(i) any suit by the Association against a Bound Party to enforce the provisions of the “Assessments” section of this Declaration;

(ii) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary to maintain the status quo and preserve the Association’s ability to enforce the provisions of the “Architectural Controls” and “Use Restrictions” sections of this Declaration;

(iii) any suit between Owners that does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party.

(b) Notice. The Bound Party asserting any Claim other than a Construction Defect Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent’s role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and

(iii) the Claimant’s proposed resolution or remedy; and

(iv) that Claimant will meet with the Respondent to discuss in good faith ways to resolve the Claim.

(c) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(d) Mandatory Mediation. All Claims that cannot be resolved by Negotiation pursuant to Section 7(c) shall be subject to mediation as a condition precedent to binding arbitration.

(i) Claimant and Respondent shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Commercial Mediation Procedures in effect on the date of this Declaration. A request for mediation shall be made by Claimant in writing, delivered to the Respondent, and filed with the person or entity administering the mediation.

(ii) The Claimant and Respondent shall share the mediator’s fee and any filing fees equally. The mediation shall be held in Atlanta, Georgia. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(e) Binding Arbitration. In the event any Claim cannot be resolved by Claimant and Respondent(s) within thirty (30) days after the date of the mediation (or within such other period as may be agreed upon by the parties), then Claimant shall have one (1) year from the date the claim arose to give written notice to Respondent(s) and the Board of the Claimant’s submission of the Claim to binding arbitration (the “Notice of Arbitration”), which arbitration shall be the sole remedy with respect to a Claim, unless the party or parties against whom the Claim is

made agree to toll the statute of limitations as to such Claim for such period as may be reasonably necessary to comply with the above obligation to attempt to resolve the Claim by good faith negotiation. In the event the parties do not agree to toll the statute of limitations, if the Claim is not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided that nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

(i) Additional Rules for Binding Arbitration.

i. Any Claim subject to, but not resolved by, mediation, as set forth in Section 7(d) shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered, except as provided herein, by the American Arbitration Association pursuant to the Commercial Arbitration Rules. A demand for arbitration shall be made in writing, delivered to the Respondent, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. Any arbitration pursuant to this Declaration shall be conducted by one (1) arbitrator, and the arbitration proceeding shall be held in Atlanta, Georgia.

ii. In all cases in which an arbitrator is required to render a decision under this Section, each party to the dispute shall submit to the arbitrator, within twenty (20) days of selection of the arbitrator, its preliminary proposal for resolution of the Dispute, and each party shall deliver a copy of its preliminary proposal to the other party(ies). Each party shall then have a period of ten (10) days to submit comments on the other party's proposal to the other party(ies). Within seven (7) days after the expiration of such ten (10) day period, each of the parties shall submit to the arbitrator its final proposal for resolution of the Claim. The arbitrator shall be required to make a final judgment as the sole resolution of the Dispute within ten (10) days of receipt of each party's final proposal.

iii. Each party agrees that it shall not have a remedy of punitive or exemplary damages against the other in any Claim and hereby waives any right or claim to punitive or exemplary damages it may have now or which may arise in the future in connection with any Claim.

iv. This Section is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Georgia. The arbitration award shall be final, binding and conclusive and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent under the laws of the State of Georgia.

(f) Legal Fees. If a party to this Declaration commences a dispute resolution proceeding, whether litigation, arbitration or otherwise, in connection with a Claim, the parties shall be entitled to present the trier of fact with individual issues for resolution. Based on evidence submitted by the parties regarding their reasonable attorneys' fees, experts' or consultants' fees, fees and expenses of arbitration and any other reasonably incurred expenses of the successful prosecution or defense of each such individual issue, the trier of fact shall be entitled to determine which party substantially prevailed on each issue and award said prevailing party such expenses as the trier of fact determines to be just. The term "dispute resolution proceeding" as used herein shall be deemed to include any appeal from any arbitration award, verdict, lower court ruling, or judgment and any proceeding in the United States Bankruptcy Court, whether or not such proceeding involves adversary or contested matters.

(g) Disputes Involving Construction Defect Claims. The Bound Parties agree that all Construction Defect Claims, as defined herein, shall be subject to the dispute resolution process set forth in this Section 7(g):

(i) The Bound Parties acknowledge and agree that the Georgia Right to Repair Act, O.C.G.A. §§ 8-2-35 through 8-2-43 (the "Act"), includes certain requirements that must be followed before a Lot Owner, Occupant, or the Association may file a lawsuit or other action for defective construction against the "contractor," as that term is defined in O.C.G.A. § 8-2-36, who constructed, improved, or repaired the Lot or Common Elements. Ninety (90) days before a Lot Owner, Occupant, or the Association files an action or

arbitration, the Lot Owner, Occupant, or the Association must serve on any Contractor a written notice of any construction conditions alleged to be defective. Under the Act, any Contractor has the opportunity to make an offer to repair or to pay for the defects, or both. The Act applies to any matter concerning the design, construction, or repair of a “dwelling,” as that term is defined in O.C.G.A. § 8-2-36, which includes the improvements on a Lot and/or the Common Elements on which a person has a complaint against any contractor; and any physical damage to the dwelling or real property on which it is located that is caused by a design or construction defect (hereinafter collectively “Construction Defect Claims”).

(ii) If a Construction Defect Claim is asserted by any Owner, Occupant, and/or the Association (collectively “Community Parties,” and any such Construction Defect Claims by any of the Association Parties being referred to herein as the “Community Claims”) against (a) Declarant and/or any of Declarant’s contractors, consultants, architects, engineers, suppliers, vendors or any other party for which Owner is responsible that provides labor, material or services for the construction project (collectively “Owner Parties”), or (b) Declarant’s Contractors and/or any of Contractor’s subcontractors, sub-subcontractors, suppliers, materialmen, consultants or any other party for whom Contractor is responsible or who provides labor, material, or services for the construction project (collectively “Contractor Parties”), then the Bound Parties agree that all such Construction Defect Claims shall be resolved as follows: (i) first, any Construction Defect Claims, as defined herein, shall be subject to the notice and procedural requirements of the Act, and all Bound Parties shall fully participate in the efforts to resolve such Construction Defect Claims pursuant to the Act; (ii) second, if any Construction Defect Claim is not resolved through the procedures set forth in the Act, then such Construction Defect Claim shall proceed to mandatory mediation with any affected Association Parties, Declarant Parties, and/or Contractor Parties in a consolidated mediation, as set forth in Section 7(h), as a condition precedent to binding arbitration. Such mediation shall be conducted as outlined in Section 7(h) below. If any such Construction Defect Claims are not completely resolved by mediation, then any such unresolved Construction Defect Claims will be resolved by a binding, consolidated arbitration involving any Association Parties, Declarant Parties, and/or Contractor Parties, the presence of whom is required if complete relief is to be accorded in the arbitration. Such arbitration shall be conducted as outlined in Section 7(i) below.

(h) Mandatory Mediation for Construction Defect Claims. All Construction Defect Claims that are not resolved through and after completion of the procedure set out in the Georgia Right to Repair Act shall be subject to mediation as a condition precedent to binding arbitration.

(i) The Bound Parties shall endeavor to resolve their Construction Defect Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Declaration. A request for mediation shall be made in writing, delivered to the affected party, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

(ii) The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in Atlanta, Georgia, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(i) Binding Arbitration for Construction Defect Claims. Any Construction Defect Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Declaration. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Construction Defect Claims then known to that party on which

arbitration is permitted to be demanded. The arbitration shall be held in Atlanta, Georgia, unless another location is mutually agreed upon.

(i) A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Construction Defect Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Construction Defect Claim.

(ii) The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

(iii) The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Declaration shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

(iv) Consolidation or Joinder.

i. A party to the arbitration, at its sole discretion, may consolidate an arbitration conducted under this Section with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

ii. Any such arbitration involving Construction Defect Claims shall include by joinder any person or entity not a party to this Declaration, including: (i) any of Contractor's necessary Subcontractors, Sub-subcontractors, suppliers, materialmen or any other party for whom Contractor is responsible or who provides labor, services or material for the construction project pursuant to the terms of a construction agreement with Declarant; and (ii) any of Declarant's contractors, consultants, architects, engineers, suppliers, vendors, or any other party for which Declarant is responsible that provides labor, services or material for the construction project, if such person or entity is involved in a common question of law or fact and/or the presence of such person is required if complete relief is to be accorded in the arbitration. Any such party shall be added to the arbitration by being named in either the Demand for Arbitration or any response to the initial Demand for Arbitration. This agreement to arbitrate, including, but not limited to the agreement to arbitrate with other persons or entities shall be specifically enforceable. All Construction Defect Claims that are related to or dependent upon on another shall be heard by the same arbitrator(s) in a single consolidated arbitration proceeding, which shall be administered as a single proceeding by the American Arbitration Association. The arbitrator(s) shall rule on any disputes over consolidation or joinder.

(v) Legal Fees in Connection with Construction Defect Claims. If a party to this Declaration commences a dispute resolution proceeding, whether litigation, arbitration or otherwise, in connection with a Construction Defect Claim, the parties shall be entitled to present the trier of fact with individual issues for resolution. Based on evidence submitted by the parties regarding their reasonable attorneys' fees, experts' or consultants' fees, fees and expenses of arbitration and any other reasonably incurred expenses of the successful prosecution or defense of each such individual issue, the trier of fact shall be entitled to determine which party substantially prevailed on each issue and award said prevailing party such expenses as the trier of fact determines to be just. The term "dispute resolution proceeding" as used herein shall be deemed to include any appeal from any arbitration award, verdict, lower court ruling, or judgment and any proceeding in the United States Bankruptcy Court, whether or not such proceeding involves adversary or contested matters.

(j) Consensus for Association Litigation. Except as provided in this Section entitled “Dispute Resolution and Limitation on Litigation”, the Association shall not commence a judicial or administrative proceeding without first providing written notice of such proposed action to each Member and obtaining the approval of at least seventy-five percent (75%) of the Members. This Section shall not apply, however, to (i) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (ii) the collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; (iv) counterclaims brought by the Association in proceedings instituted against it; or (v) breach of contract claims against vendors providing goods and services to the Association. This Section shall not be amended unless such instrument is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 8. Successors to Declarant. In no event shall any person or other entity succeeding to the interest of the Declarant by assignment, operation of law or through purchase of the Declarant's interest in all or any portion of the Property at foreclosure, sale under power or by deed in lieu of foreclosure, be liable for any act, omission, amount outstanding or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of the Declarant. A Mortgagee succeeding to Declarant's interest in all or any portion of the Property at foreclosure, sale under power or by deed in lieu of foreclosure shall be bound by the terms hereof, and shall have the right, but not the obligation, to assume the role and responsibility of Declarant hereunder.

- SIGNATURES CONTINUED ON NEXT PAGE -

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officer on the day and year set forth below.

DECLARANT:

Signed, sealed and delivered this
____ day of _____, 20____,
in the presence of:

PARK AT MONROE, LLC
a Georgia limited liability company

Unofficial Witness

By: _____ (SEAL)
Name:
Title:

Notary Public
[NOTARY SEAL]

EXHIBIT “A”

LEGAL DESCRIPTION

EXHIBIT “B”
INITIAL BYLAWS
OF
PARK AT MONROE HOMEOWNERS ASSOCIATION, INC.
ADOPTED AS OF THE DATE OF INCORPORATION

Article 1. Name and Definitions

Section 1. Name. The name of the corporation is Park at Monroe Homeowners Association, Inc. (the "Association"), a Georgia non-profit corporation organized, in accordance with the Articles of Incorporation of the Association and the Declaration of Covenants, Restrictions and Easements for Park at Monroe, recorded in the Fulton County, Georgia land records (as may be amended, the "Declaration").

Section 2. Definitions. The term "Nonprofit Code" as used herein shall mean the Georgia Nonprofit Corporation Code, O.C.G.A. 14-3-101, *et seq.*, as amended. The term “Majority” shall mean those eligible votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number. The other capitalized terms used herein that are not defined herein shall have the meanings specified in the Declaration. All terms not defined herein or in the Declaration shall have their generally accepted meanings.

Article 2. Association Membership and Voting

Section 1. Membership. There is one class of membership. Declarant, as the Owner of the Lots being created by the Declaration, shall initially be the sole Member of the Association. An Owner of a Lot shall automatically become a Member of the Association upon taking title to the Lot and shall remain a Member for the entire period of ownership. Membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of that Lot and may be transferred only in connection with the transfer of title.

Section 2. Multiple Owners. In the event that title to a Lot is held by more than one (1) Person, the Membership shall be shared in the same proportion as the title, but there shall be only one (1) Membership and one (1) vote per Lot.

Section 3. Entity Members. In the event a Member is a limited liability company, corporation, partnership, trust, or other legal entity that is not a natural person, then any natural person who is a manager, officer, director, partner, beneficiary or other designated agent of such Member shall be eligible to represent such Member in the affairs of the Association by providing evidence of authority to the Secretary of the Association in writing. Such natural person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity which is the Member, and termination of the person's relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving and such vacancy will be filled in accordance with these Bylaws.

Section 4. Voting. Each Lot shall be entitled to one (1) equal vote. When more than one (1) Person owns a Lot, the vote for such Lot shall be exercised as the co-owners determine between or among themselves, provided that no more than one (1) vote may be cast with respect to any Lot. If only one (1) co-owner attempts to cast the vote for a Lot, it shall be conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such Lot. In the event of an attempt by more than one (1) Person to cast such vote, the Lot's vote shall be suspended and shall not be counted.

Section 5. Eligibility. No Member shall be eligible to vote or to be elected to the Board of Directors if such Member had its voting rights suspended. No Member whose voting rights have been suspended shall be counted as an eligible vote for purposes of establishing a quorum, establishing a Majority of the Association or for any other purpose.

Article 3. Association Meetings

Section 1. Annual Meetings. The Association shall hold regular annual meetings of the Members, with the date, hour, and place to be set by the Board of Directors. At the annual meeting, comprehensive reports of the affairs, finances, and budget projections of the Association shall be made to the Members.

Section 2. Special Meetings. Special meetings of the Members may be called for any purpose at any time by the President, or upon written petition of at least fifteen (15%) percent of the Members. Any such written petition by the Members must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of Members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then call a special meeting for the purpose stated in the petition, and the Secretary shall send, within thirty (30) days after the date the petition is submitted to the Secretary, notice of the meeting in accordance with these Bylaws. If notice is not given within such time period, any person signing the petition may set the time and place of the meeting and give notice of the meeting in accordance with these Bylaws. Only those matters that are within the purpose or purposes described in the meeting notice may be conducted at the special meeting unless objection thereto is waived as set forth below.

Section 3. Notice of Meetings. It shall be the duty of the Secretary to mail or deliver to each Member a notice of each annual or special meeting of the Association at least twenty-one (21) days prior to each annual meeting and at least ten (10) days prior to each special meeting. The notice shall state the time, place and purpose of the meeting. The notice shall be delivered personally, sent by United States mail, postage prepaid, statutory overnight delivery, or issued electronically in accordance with the Nonprofit Code to all Members at such address or addresses as any of them may have designated in writing to the Secretary or, if no other address has been so designated, at the address of their respective Lots. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered proper service of notice.

Section 4. Place of Meeting. Meetings of the Association shall be held at the principal office of the Association or at any other suitable place as may be designated by the Board.

Section 5. Waiver of Notice. A Member may, in writing or by electronic transmission, waive notice of any meeting of the Members, either before or after such meeting. A Member's attendance at a meeting (in person or by proxy) waives objection to lack of notice or defective notice of the meeting unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting. A Member's attendance at a meeting further waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

Section 6. Quorum. A quorum is composed of those Members attending a meeting or voting on a matter in person or by proxy, provided that, unless twenty percent (20%) or more of the eligible voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of Members are those matters that are described in the meeting notice. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is concluded and shall not need to be reestablished. Unless the Declaration, the Nonprofit Code, the Articles of Incorporation or these Bylaws require a greater vote, if a quorum is present, the affirmative vote of a Majority of the votes cast is the act of the Members.

Section 7. Adjournment. Any meeting of the Members may be adjourned to a different date, time or place and notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment, so long as any new date is not more than ten (10) from the original date. Any business which could be transacted at the original session of the meeting may be transacted at a reconvened session.

Section 8. Proxy. Any Member entitled to vote may do so by a dated written proxy signed either personally or by an electronic transmission valid under the Nonprofit Code. A proxy must specify the meeting at which the proxy is valid and must be received by Secretary or other officer or agent of the Association prior to the opening of the meeting for which it is to be used. Appointment of a proxy is revoked by the person appointing the proxy: (1) attending the meeting and voting in person; or (2) signing and delivering to the Secretary or other office or agent of the Association a written revocation of the proxy or a subsequent form appointing another proxy. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

Section 9. Action Taken Without a Meeting. Any action that may be taken at any meeting of Members may be taken without a meeting if the Association delivers a ballot in writing or by electronic transmission to every Member entitled to vote on the matter.

(a) A ballot shall: (1) set forth each proposed action; and (2) provide an opportunity to vote for or against each proposed action.

(b) Approval by ballot pursuant hereto shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(c) All solicitations for votes by ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the Association in order to be counted.

(d) A ballot may not be revoked.

Section 10. Membership List. After fixing a record date for a meeting, the Association shall prepare an alphabetical list of the names of all Members who are entitled to notice of the meeting. The list must show the address of each Member entitled to vote at the meeting. The list of Members must be available for inspection by any Member for the purpose of communication with other Members concerning the meeting, beginning two (2) business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, as provided further in the Nonprofit Code. This list shall not be used to solicit money or property unless such money or property will be used solely to solicit the votes of the Members in an election to be held for the Association; nor shall the list be used for commercial purposes, sold to or purchased by any Person.

Article 4. Board of Directors

Section 1. Composition. The affairs of the Association shall be governed by a Board of Directors. During the Declarant Control Period (as hereinafter defined), the Board of Directors shall be composed of one or more Persons selected by Declarant. After the Declarant Control Period, the Board of Directors shall be composed of three (3) persons who shall be elected by a vote of the Members. Except for directors appointed by the Declarant hereunder, the directors shall be Members.

Section 2. Term of Office. Notwithstanding anything to the contrary herein, the Declarant shall have the exclusive right to appoint and remove the Member or Members of the Board of Directors, with or without cause, until such time as the earlier of the following dates shall occur: (i) the date which the Declarant may so designate by notice in a writing delivered to the Association, or (ii) the date on which one hundred (100%) percent of the Lots planned by the Declarant to be a part of the Property are Improved Lots (as that term is defined in the Declaration). The period of time during which the Declarant has the right to appoint or remove directors is herein referred to as the "Declarant Control Period." The directors appointed by the Declarant need not be Owners or residents of the Property.

At the first election of directors of the Association following the expiration or termination of the Declarant Control Period, the one (1) director receiving the most votes shall be elected for a term of two (2) years and the remaining two (2) directors elected shall have a term of one (1) year. At that time or at any time thereafter, the Board of Directors, by Majority vote, may elect to change the number of directors to another number so long as the total number of directors is an odd number and there are no less than three (3) and no more than nine (9) directors. At the expiration of the term of office of each director, and at each annual meeting thereafter, a successor shall be elected to serve for a term of two (2) years. Except as otherwise provided herein, each director shall hold office until his successor shall have been elected by the Association.

Section 3. Nominations and Declarations of Candidacy. The Board of Directors shall prescribe the opening date and the closing date of a reasonable filing period in which all eligible persons who have an interest in serving as a director may file as a candidate for such positions. The Board of Directors shall also have the right to establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner. Each candidate shall be given a reasonable, uniform opportunity to communicate his qualifications to the Members and to solicit votes.

Section 4. Elections. All Members of the Association eligible to vote in an election shall be entitled to cast their entire vote for each directorship to be filled. There shall be no cumulative voting. The directorships for which elections are held shall be filled by that number of candidates receiving the most votes. Voting for election of the Board of Directors shall be by written ballot.

Section 5. Removal of Directors Provided that the meeting notice states that the purpose, or one of the purposes, of the meeting is removal of the director(s), any one (1) or more directors, except for directors appointed by Declarant during the Declarant Control Period, may be removed with or without cause by a Majority vote of the Members of the Association at any regular or special meeting of the Association, and a successor may then and there be elected to fill the vacancy thus created.

Any director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings or is more than thirty (30) days past due in the payment of any assessment may be removed by the vote of a Majority of the other directors.

Section 6. Resignation of Directors. A director may resign at any time by delivering notice in writing or by electronic transmission to the Board of Directors. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

Section 7. Vacancies. Vacancies in the Board of Directors caused by any reason, except the removal of a director by Declarant or by vote of the Membership, shall be filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. The successor so elected shall hold office for the remainder of the term of the director being replaced.

Section 8. Compensation. Directors shall not be compensated for services as such. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors.

Section 9. Conflicts of Interest. Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided that the director's interest is disclosed to the Board of Directors and the contract is approved by a Majority of the directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall not count for purposes of establishing a quorum of the Board of Directors. The interested director shall be entitled to be present at any meeting at which the proposed contract is discussed and to discuss the proposed contract unless requested by any other director to leave the room during the discussion. Notwithstanding anything contained herein to the

contrary, during the Declarant Control Period, the directors shall be authorized on behalf of the Association to enter into contracts with Declarant and its affiliates

Article 5. Board Meetings

Section 1. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by the Board, but after the expiration of the Declarant's right to appoint Directors hereunder, such meetings shall be held at least once every six (6) months. The newly elected Board shall meet within ten (10) days after each annual meeting of the Association.

Section 2. Special Meetings. Special meetings of the Board of Directors may be called by any director on two (2) days' notice to each director given by mail, in person, by telephone, or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting.

Section 3. Waiver of Notice. Any director may waive, in writing or by electronic transmission, notice of any meeting of the Board of Directors. Attendance by a director at any meeting of the Board of Directors shall also waive any required notice to him or her of the meeting unless the director promptly objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 4. Quorum and Conduct of Meeting. A Majority of directors shall constitute a quorum for the transaction of business. Any or all directors may conduct or participate in a meeting by any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 5. Open Meetings. All meetings of the Board of Directors shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board of Directors. Notwithstanding the above, the Board of Directors may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 6. Action Without a Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if a Majority of the directors consent in writing or by electronic transmission to such action. Such consents must describe the action taken and shall be filed with the Association's records.

Article 6. Powers and Duties of the Board

Section 1. Management. The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Development and may perform all acts and do all things that are not required to be performed by a vote of the Members pursuant to Georgia law, the Declaration, the Articles of Incorporation, or these Bylaws. The duties of the Board of Directors include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) designating assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing installment payments for the annual assessment;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility as more particularly described in the Declaration;
- (d) designating, hiring, and dismissing the personnel necessary for the operation and upkeep of the Area of Common Responsibility and supervising the personnel in the performance of their duties;
- (e) collecting the assessments, depositing the proceeds thereof in a bank or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in O.C.G.A. §14-3-302, and using the proceeds to administer the Association;
- (f) making, establishing, abolishing, amending, and enforcing reasonable rules and regulations and imposing sanctions for violations of the Declaration, these Bylaws and the rules and regulations including, without limitation, monetary fines as more specifically set forth in the Declaration and these Bylaws;
- (g) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to, or alterations of the Common Areas in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty;
- (i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- (j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- (k) paying the costs of all services rendered to the Association or its Members and not directly chargeable to specific Owners;
- (l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred;

(m) contracting with any Person for the performance of various duties and functions, including but not limited to management companies, legal and accounting services. The Board of Directors shall have the power to enter into common management agreements with other Persons. Any and all functions of the Association shall be fully transferable by the Board of Directors, in whole or in part, to any other entity; and

(n) contracting with any Person or entity for the sharing of the use of Amenities (as that term is defined in the Declaration), whether located inside or outside of the community, under terms acceptable to the Board of Directors in their sole discretion (but not without the approval of Declarant).

Section 2. Borrowing Limitation. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration, or improvement of the Area of Common Responsibility, and for other purposes, with the approval of a Majority vote of the Members of the Association.

Section 3. Management Agent. The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize. The Board of Directors shall use reasonable efforts in any management contract to provide for termination of such contract with or without cause and without penalty, upon no more than thirty (30) days written notice. No management contract shall have a term in excess of one (1) year.

Section 4. Committees. The Board may establish an Architectural Control Committee for the purpose of establishing and maintaining architectural standards in the Development as provided in the Declaration and such other committees as the Board determines with the powers and duties that the Board shall authorize. Unless otherwise provided in these Bylaws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed with or without cause at any time and with or without a successor being named.

Article 7. Officers

Section 1. Offices. The principal officers of the Association shall be the President, the Secretary and the Treasurer, all or any of which may be the same person. A Vice President may be elected at the discretion of the Board.

Section 2. Election of Officers. The Association officers shall be elected annually by the Board at the first Board meeting following each annual meeting of the Members and shall hold office at the pleasure of the Board and until a successor is elected.

Section 3. Removal of Officers. Upon an affirmative Majority vote of the Board, any officer may be removed, either with or without cause, and a successor may be elected.

Section 4. Vacancies. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

Section 5. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and of the Board. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the power to appoint committees from among the Members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 6. Vice President. The Vice President, if any, shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 7. Secretary. The Secretary shall keep the minutes of all meetings of the Members and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under Georgia law.

Section 8. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, for renewing the corporate registration and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

Section 9. Other Officers. Other offices may be created by the Board of Directors with such titles and duties as are defined by the Board of Directors.

Section 10. Signing Authority. After the expiration of the Declarant Control Period, all agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

Article 8. Rule Making and Enforcement

Section 1. Authority and Enforcement. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Lots and the Common Areas; provided that the rules or regulations must be in furtherance of, and not contrary to, the uses and purposes set forth in the Declaration and these Bylaws, and provided further that copies of all such rules and regulations shall be furnished to all Members, who shall each deliver a copy thereof to all occupants of such Member's Lot. Every Member and occupant shall comply with the Declaration, Bylaws and rules and regulations, and any lack of compliance therewith shall entitle the Association to take action to enforce the terms of the Declaration, Bylaws or the rules and regulations. Following the expiration of the Declarant Control Period, any rule or regulation may be repealed by the affirmative vote or written consent

of a Majority of the total Association vote at an annual or special meeting of the Membership (except as otherwise restricted in the Declaration during the time that the Declarant owns any Lot).

For any violation of a duty, restriction, or obligation imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder (except for the obligation to pay assessments, which is provided in Article 9 below), the Board of Directors shall have the power to impose reasonable fines, which, pursuant to the Declaration shall be a charge on the property and which shall constitute a lien upon the Member's Lot if unpaid, and/or to suspend a Member's right to vote and/or to use the Common Areas provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. In the event that any occupant of a Lot violates the Declaration, Bylaws, or a rule or regulation and a fine is imposed, notice of such violation shall be sent to the Member and occupant, and the fine shall first be assessed against such occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board of Directors, the Member shall pay the fine upon notice from the Board of Directors, and the fine shall be an assessment and a lien against the Lot until paid. Such delinquency shall constitute a continuing lien as provided in Paragraph 10(b) and (c) of the Declaration. The failure of the Board of Directors to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board of Directors to do so thereafter.

Section 2. Fining and Suspension Procedure. The Board of Directors shall not impose a fine, suspend the right to vote or suspend the right to use the Common Areas (provided, however, if a Member is shown on the books of the Association to be delinquent in any payment due the Association, imposition of a fine, suspension of the right to vote and the right to use the Common Areas shall be automatic as more specifically set forth in the Declaration), unless and until the Association has sent or delivered written notice to the violator as provided in subsection (a) below. Any such fine or fines may be effective or commence upon the sending of such notice or such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board of Directors to challenge such fine under subsection (b) below.

(a) Notice. If any provision of the Declaration or Bylaws or any rule or regulation of the Association is violated, the Board of Directors shall send the violator written notice identifying the violation and fine(s) being imposed and advising the violator of the right to request a hearing before the Board of Directors to contest the violation or fine(s) or to request reconsideration of the fine(s). Fine(s) may be effective or commence upon the sending of such notice or such later date specified in such notice, notwithstanding the violator's right to request a hearing before the Board of Directors to challenge the fine. In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(b) Hearing. If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board of Directors shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board of Directors may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time.

Article 9. Assessments and Enforcement

Section 1. Authority and Enforcement. The Board of Directors shall have the authority to levy and collect reasonable assessments governing the Property as provided for in the Declaration. All sums lawfully assessed by the Association against any Lot and the Owner thereof, together with interest thereon and the costs of collection thereof, shall, from the time the sums become due and payable, be the personal obligation of such Owner/Member and constitute a continuing lien in favor of the Association on such Lot.

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

Section 2. Fining Procedure. If a Member is shown on the books of the Association to be delinquent in any assessment due the Association, imposition of a late fee in the amount due shall be assessed against such Lot and the entire amount of such assessment, including the portion thereof which would otherwise be payable in installments, plus the late fee, may be declared by the Board of Directors to be immediately due and payable in full to the Association. All other lien rights and remedies available to the Association shall be binding on the Member if delinquent in the payment of his/her assessments. The Member's right to vote and the Member's right to use the Common Areas (provided that nothing herein shall authorize the Association to limit ingress and egress to or from a Lot) shall automatically be suspended for any assessments which are overdue by thirty (30) days or longer.

A late notice may be sent to a Member who has not paid assessments or late fees in full as more specifically set forth in the Declaration. The late notice may warn the Member that the account will be accelerated. If the assessment remains unpaid, the Association may institute suit to collect the debt and foreclose its lien as more specifically set forth in the Declaration. Non-receipt of such notice does not relieve the Member of his or her financial obligation to pay the costs of collection accrued by the Association for the satisfaction of the delinquent debt, including, but not limited to the late fees, interest, all costs of collections, including the costs of filing any liens against the delinquent property and costs of filing a civil suit for collection and attorney's fees.

If the Association receives from any Member, in any accounting year, two (2) or more checks returned for insufficient funds for payment of assessments or other charges, the Board may require all future payments to be made by certified check, cashier's check or money order for the remainder of the fiscal year.

Payments received shall be credited in the following order to the fullest extent allowed by the law:

- a. to cover NSF charges and attorney fees
- b. to cover late charges

- c. to cover interest
- d. to cover delinquent or past due assessments
- e. to cover current assessments to include: initiation fee/capital contribution.

Failure of the Association to follow any of the procedures set forth herein or in the Declaration shall not excuse any Member from its obligation to pay all assessments, interest, charges and costs, including reasonable attorneys' fees, due in a timely manner, nor shall failure constitute a waiver, modification or release of the Association's right to collect all assessments, costs, including reasonable attorneys' fees, charges and interest due to the Association.

Section 3. Suspension of Utilities. In addition to the remedies herein, the Board of Directors may suspend a Member's right (and that of an occupants) to the use of utilities controlled by the Association whether or not actually provided by the Association or by a third party on their behalf, including without limitation, electricity, water or gas until delinquent assessments and all related charges, including any applicable attorneys' fees, are paid in full. Prior to the imposition of any such suspension, the delinquent Member shall be sent notification that such utilities will be disconnected for non-payment and that Member will have an opportunity to be heard before the Board of Directors or such committee the Board of Directors may establish to hear such cases. No such suspension shall be imposed in a manner that will endanger the health, safety or property of any Member or occupant.

Article 10. Additional Remedies and Enforcement Rights

Section 1. Self-Help. Notwithstanding anything to the contrary herein contained, the Board of Directors may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, the towing, booting or other means of handling vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedures set forth in Articles 8 and 9. In any such action, to the maximum extent permissible, the Member or occupant responsible for the violation for which abatement is sought shall be responsible for reasonable attorney's fees or other costs actually incurred.

Section 2. Rights of Entry and Removal. The Association or its duly authorized agent shall have the power to enter a Lot or upon any portion of the Common Areas to abate or remove any structure, thing or condition which violates the Declaration, the Bylaws, or the rules and regulations, using such force as may be reasonably necessary; provided, however, written notice shall be given to the Member/Owner of the Lot at least two (2) days prior to the time that any items of construction are altered or demolished; provided further that in the event that an emergency exists in which the abatement or removal is immediately required, the abatement or removal may be carried out without such notice, and the Association shall give such notice as soon thereafter as is reasonably possible, but in no event later than such timeframes as set forth in the Declaration. All costs of self-help, including reasonable attorneys' fees, shall be assessed against the violating Member and shall be collected as provided herein for the collection of assessments.

Section 3. Remedies Cumulative. Nothing herein shall in anyway limit the remedies available to the Association. All remedies herein shall be deemed cumulative of those set forth in the Declaration of the Association and of those otherwise available at law or in equity.

Article 11. Miscellaneous

Section 1. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid, or statutory overnight delivery: (a) If to a Member/Owner, at the address which the Member has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Lot owned by such Member; (b) If to an occupant, at the address of the Lot occupied; or (c) If to the Association or the Board of Directors, at the address of the principal office of the Association or at such other address as shall be designated in writing and filed with the Secretary.

Section 2. Electronic Documents and Signatures. All Electronic Documents and Electronic Signatures (as such terms are defined in the Georgia Electronic Records and Signatures Act, O.C.G.A. 10-12-1, *et seq.*) shall be governed by the Georgia Electronic Records and Signatures Act. The Board may require reasonable verification of any Electronic Document or Electronic Signature and, pending verification, the Board may refuse to accept any such Electronic Document or Electronic Signature that, in the Board's sole discretion, is not clearly authentic. Neither the Board nor the Association shall be liable to any Member or any other Person for accepting or acting in reliance upon an Electronic Signature or Electronic Document which the Board reasonably believes to be authentic. Any Member or Person who negligently, recklessly, or intentionally submits any falsified Electronic Document or unauthorized Electronic Signature shall fully indemnify the Association for actual damages, reasonable attorneys' fees, and expenses incurred as a result of such acts.

Section 3. Rules of Order. Robert's Rules of Order (latest edition) shall govern all Association proceedings when not in conflict with Georgia law, the Declaration, these Bylaws or the Articles of Incorporation.

Section 4. Liability and Indemnification of Officers and Directors and Committee Members. The Association shall indemnify every officer, director and committee member against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person is an officer, director or committee member at the time such expenses are incurred subject to the limitations below. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such individual in the performance of his duties, except for his own individual willful misfeasance or malfeasance. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such individuals may

also be Members of the Association), and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member or former officer, director or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

Section 5. Severability. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws or the Declaration.

Section 6. Captions and Construction. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof. The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 7. Fiscal Year. The fiscal year of the Association may be set by a resolution of the Board of Directors and, in the absence thereof, shall be the calendar year.

Section 8. Financial Review. A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board of Directors. However, after having received the Board of Directors' financial statement review at the annual meeting, the Owners may, by a Majority of the Association vote, require that the accounts of the Association be audited as a Common Expense by an independent accountant. Such statement shall be made available to the holder, insurer, or guarantor of any first mortgage on a Lot upon submission of a written request and must be available within one hundred twenty (120) days of the fiscal year end of the Association.

Section 9. Conflicts. In the event that there are conflicts or inconsistencies between the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, or the Articles of Incorporation, then the provisions of the Georgia Nonprofit Corporation Code (as may be applicable), the Declaration, the Articles of Incorporation and these Bylaws, in that order, shall prevail, and each Member, by acceptance of a deed or other conveyance for his Lot, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

Section 10. Amendment. Except where a higher vote is required for action under a particular provision of the Declaration or Bylaws, in which case such higher vote shall be necessary to amend, these Bylaws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Members holding two-thirds (2/3) of the total vote of the Association. During the Development Period, any amendment to these Bylaws shall also require the written consent of Declarant. Notice of any meeting at which an amendment will be considered shall state that fact and the subject matter of the proposed amendment.

Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

Section 11. Books and Records.

(a) All Members of the Association and Eligible Mortgagees shall be entitled to inspect the following records at a reasonable time and location specified by the Association, upon written request at least five (5) days before the date on which the Member wishes to inspect and copy:

- (i) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;
- (ii) its Bylaws or restated Bylaws and all amendments to them currently in effect;
- (iii) its Declarations or restated Declarations and all amendments to them currently in effect;
- (iv) any and all resolutions adopted by either its Members or the Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of Members or any class or category of Members;
- (v) any rules governing the Association;
- (vi) any books, records or financial statements of the Association
- (vii) the minutes of all meetings of Members and records of all actions approved by the Members for the past three (3) years;
- (viii) all written communications to Members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;
- (ix) a list of the names and business or home addresses of its current direct officers; and
- (x) its most recent annual registration delivered to the Secretary of State of Georgia.

(b) A Member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the Member wishes to inspect and copy only if the Member's demand is made in good faith and for a proper purpose that is reasonably relevant to the Member's legitimate interest as a Member; the Member describes with reasonable particularity the purpose and the records the Member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose:

- (i) excerpts from minutes of any Board of Directors meeting, records of any action of a committee of the Board of Directors while acting in place of the Board of Directors on behalf of the Association, minutes of any meeting of the Members, and records of action taken by the Members or the Board of Directors without a meeting, to the extent not subject to inspection under subsection 9(a) above;
- (ii) accounting records of the Association; and
- (iii) the Membership list only if for a purpose related to the Member's interest as a Member. Without the consent of the Board of Directors, a Membership list or any part thereof may not be: used to solicit money or property unless such money or property will be used solely to solicit the votes of the Members in an election to be held by the Association and may not be used for any commercial purpose; or sold to or purchased by any person.

(c) The Association may impose a reasonable charge, covering the cost of labor and material for copies of any documents provided to the Member.

-End of Bylaws-

CONSENT AND JOINDER OF LENDER

WHEREAS, Spire Residential (together with its successors and assigns, "Lender"), is the holder of the following documents:

- i. that certain DEED TO SECURE DEBT, SECURITY AGREEMENT AND FIXTURE FILING from _____, LLC ("Borrower"), to Lender, recorded in Deed Book _____, Page _____, Fulton County, Georgia records, as rerecorded in Deed Book _____, Page _____, aforesaid records; and
- ii. that certain Assignment of Leases and Rents from Borrower to Lender, recorded in Deed Book _____, Page _____, Fulton County, Georgia records, as rerecorded in Deed Book _____, Page _____, aforesaid records; and
- iii. that certain UCC Financing Statement showing Borrower as the debtor and Lender as the secured party and recorded _____ in Deed Book _____, Page _____, aforesaid records; and
- iv. that certain DEED TO SECURE DEBT, SECURITY AGREEMENT AND FIXTURE FILING from _____ ("Borrower"), to Lender, recorded in Deed Book _____, Page _____ 1, aforesaid records; and

(all of the foregoing, together with all amendments, restatements, modifications and extensions thereof now or hereafter entered into, are hereinafter collectively referred to as the "Security Deed").

For and in consideration of \$10.00 and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Lender hereby consents to and joins in the execution and recording of the foregoing DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR PARK AT MONROE (the "Declaration") and agrees that the Security Deed and the lien or liens created thereby are subject and subordinate to the Declaration; provided, however, that the execution by Lender of this Consent and Joinder of Lender shall not be deemed to diminish, impair, limit, repudiate or forgive any obligation of Borrower under the Security Deed and Borrower shall remain liable for the faithful performance of all obligations thereunder. In the event that Lender should succeed to ownership of all or any portion of the property encumbered by the Security Deed through foreclosure, deed-in-lieu or otherwise, it will be bound by the Declaration.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, this Consent and Joinder of Lender has been executed and delivered effective as of the date of the Declaration.

Signed, sealed, and delivered
in the presence of:

Witness

Notary Public

[NOTARY SEAL]

Spine Residential,

By: _____ (Seal)

Name: _____

Title: _____

