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DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND
RESERVATION OF EASEMENTS FOR RIVENDALE CROSSING

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

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**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND
RESERVATION OF EASEMENTS FOR RIVENDALE CROSSING**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR RIVENDALE CROSSING ("Declaration") is made this 1st day of JULY, 2013 by **FISCHER DEVELOPMENT CO. II, INC.**, a Kentucky corporation (the "Declarant"), under the following circumstances:

A. Declarant is the owner in fee simple of certain real property located in Land Lot 304 of the 7th District, Gwinnett County, Georgia, more particularly described in Exhibit A attached hereto (the "Property") and desires to create a residential community consisting of single family detached homes together with Common Property (as hereinafter defined) for the benefit of said community; and

B. Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said Common Property; and to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said Property and the subsequent Owners thereof; and

C. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an association to which should be delegated and assigned the powers and duties of maintaining and administering the Common Property and administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created; and

D. Declarant has formed or will form the Rivendale Crossing Homeowners Association, Inc., as a Georgia nonprofit corporation (the "Association"), which shall be responsible for the maintenance, management and control of the Common Property;

NOW, THEREFORE, Declarant hereby declares that all of the Property described in Exhibit A and such Additional Property as may be subjected to the provisions hereof, shall be held, sold and conveyed, subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, and any subdivision plat which includes the Property, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

SECTION 1
DEFINITIONS

The words in this Declaration which begin with capital letters, other than words which would be normally capitalized, unless the context otherwise requires, shall have the meanings set forth in this Section 1.

1.1 Additional Property. "Additional Property" means other real property in the vicinity of the Property which is owned and/or acquired by Declarant, which may be annexed to the Property in accordance with Section 10 below.

1.2 Architectural Guidelines. "Architectural Guidelines" as defined in Section 5.2 of this Declaration.

1.3 Areas of Common Responsibility. "Areas of Common Responsibility" shall mean and refer to the Common Property, together with those areas, if any, which by the terms of this Declaration or by contract or agreement become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Property, or any public rights-of-way within or adjacent to the Property or regional detention basins adjacent to the Property, may be part of the Areas of Common Responsibility.

1.4 Articles and Articles of Incorporation. "Articles" and "Articles of Incorporation" mean those articles, filed with the Secretary of State of the State of Georgia, incorporating Rivendale Crossing Homeowners Association, Inc., as a non-profit corporation under the Georgia Nonprofit Corporation Code, as the same may be amended from time to time.

1.5 Assessments. "Assessments" means the Base Assessment, Special Assessment, Specific Assessment and Working Capital Assessment.

1.6 Association. "Association" means Rivendale Crossing Homeowners Association, Inc., a Georgia nonprofit corporation, which owns, operates and maintains the Common Property, and any successor organization which owns, operates and maintains the Common Property.

1.7 Base Assessment. "Base Assessment" means the charge established by Section 4.2 of this Declaration.

1.8 Board of Directors. "Board of Directors" means the Board of Directors of the Association established pursuant to its Articles of Incorporation, Bylaws and this Declaration.

1.9 Builder(s). "Builder(s)" means Fischer Homes ATL, L.L.L.P., its successors and assigns, and such other persons and entities as may acquire one or more Lots from Declarant for the purpose of constructing improvements thereon for resale, but only to the extent of such Lots acquired.

1.10 Bylaws. "Bylaws" means the Bylaws of Rivendale Crossing Homeowners Association, Inc, attached to this Declaration as Exhibit C and incorporated herein by this reference as may be amended from time to time.

1.11 Class A Members or Class A Membership. "Class A Members" or "Class A Membership" means those members of the Association consisting of all Owners except, during the Development Period, Declarant.

1.12 Class B Member or Class B Membership. "Class B Member" or "Class B Membership" means, during the Development Period, Declarant, as a member of the Association.

1.13 Common Property. "Common Property" shall mean and refer to all real property, or any interest therein, together with improvements located thereon, owned by, leased to the Association or granted as an easement to the Association, for the benefit, use and enjoyment of its Members.

1.14 Common Expenses. "Common Expenses" shall mean as defined in Section 4.2 of this Declaration.

1.15 Constituent Documents. "Constituent Documents" mean the Declaration, the Record Plat, the Bylaws, the Articles of Incorporation, the rules and regulations, if any, the management agreement, if any, entered into between the Association and any professional manager of the Property, and any other basic documents used to create and govern the Property.

1.16 Declarant. "Declarant" means Fischer Development Co. II, Inc., a Kentucky corporation and its successor, successor-in-title or assigns taking title to any portion of the property described in Exhibit A or Exhibit B hereof for the purpose of development and/or sale and designated as Declarant in a recorded instrument by the then holder of the rights of Declarant hereunder. Any or all of the rights of Declarant set forth in this Declaration, the Articles of Incorporation or the Bylaws may be transferred or assigned in whole or in part to other persons, provided that, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration, the Articles of Incorporation or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and recorded in the public real estate records of the county where the Subdivision is located.

1.17 Declaration. "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Rivendale Crossing, as the same may from time to time be amended in the manner prescribed herein.

1.18 Default. "Default" means any violation or breach of, or any failure to comply with, the Restrictions, this Declaration or any other Constituent Documents.

1.19 Development Period. "Development Period" means the period commencing on the date on which this Declaration is recorded in the Gwinnett County, Georgia land records and terminating on the earlier to occur of: (i) within thirty (30) days following the date when one

hundred percent (100%) of the Dwelling Units which may be built on the Property have been deeded to an Owner who intends to occupy the Dwelling Unit or use the Dwelling Unit for residential purposes; or (ii) thirty (30) years from the date of recording of the Declaration.

1.20 Dwelling Unit. "Dwelling Unit" means any building or portion of a building situated upon the Property designed and intended for use and occupancy as a residence by a single person, a family or family-sized group of persons. A single family residential dwelling on a Lot shall become a Dwelling Unit upon the issuance of a certificate of occupancy by the appropriate governmental authority.

1.21 Lot(s). "Lot(s)" means each of the parcels of land shown as such upon the Record Plat(s) of the Property.

1.22 Maintenance Standards. "Maintenance Standards" mean those standards adopted by Declarant and/or the Board pursuant to Section 7 of the Declaration as the same may from time to time be amended.

1.23 Members. "Members" means all Class A Members and the Class B Member.

1.24 Occupant. "Occupant" means any person in possession of a Lot or Dwelling Unit whether or not such possession is lawful and shall include but not be limited to, an Owner's family members, guests, invitees, and Tenants.

1.25 Open Spaces. "Open Spaces" shall mean and refer to a portion of the Common Property being all open spaces located on the Property as shown on any Record Plat, which are for the benefit of the Owners in the Subdivision.

1.26 Owner. "Owner" means, with respect to any Lot, the owner of record from time to time, whether one or more persons or entities, of an interest in fee simple, reversion, remainder or leasehold estate of 99 years or more. Such term shall include contract sellers except those having an interest merely as security for the performance of an obligation.

1.27 Private Storm Sewer Easements. "Private Storm Sewer Easements" shall mean and refer to any easements shown on any Record Plat to provide surface drainage. These areas are for the benefit of all Lot Owners and any applicable governmental authority having jurisdiction over drainage control.

1.28 Property. "Property" means that certain land more particularly described in Exhibit A to this Declaration. When portions of the Additional Property are subjected to this Declaration pursuant to Section 10 herein, those portions shall then be deemed part of the Property.

1.29 Record Plat. "Record Plat" means each plat for Rivendale Crossing, recorded in the Gwinnett County, Georgia land records, as the same may be revised from time to time.

1.30 Restrictions. "Restrictions" means all covenants, conditions, restrictions, easements, charges, liens and other obligations provided for in this Declaration, including,

without limitation, the Maintenance Standards and all notices, rules and regulations and Architectural Guidelines issued in accordance with this Declaration.

1.31 Special Assessment. "Special Assessment" means the charge established by Section 4.4 of this Declaration.

1.32 Specific Assessment. "Specific Assessment" means the charge established in Section 4.5 of this Declaration.

1.33 Structure. "Structure" means:

(a) any thing or object (other than trees, shrubbery, landscaping and hedges which are less than two feet high) the placement of which upon any part of the Property may affect the appearance of the Property, including, without limitation, porch, shed, barn, storage facility, covered or uncovered patio, fence, curbing, paving, wall, signboard or any other temporary or permanent improvement; and

(b) any excavation, fill, ditch, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any part of the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any part of the Property.

1.34 Subdivision. "Subdivision" means all phases or sections of the Record Plat for Rivendale Crossing, a subdivision in Gwinnett County, Georgia, and consisting of all the Property from time to time made subject to the provisions of this Declaration.

1.35 Subdivision-Wide Standard. "Subdivision-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standard may be more specifically determined by the Board of Directors and articulated in the Architectural Guidelines and Maintenance Standards, but must be consistent with the Subdivision-Wide Standard originally established by Declarant.

1.36 Supplemental Declaration. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which subjects all or any portion of the Additional Property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land subject to this Declaration.

1.37 Tenant. "Tenant" means any person occupying any Lot pursuant to a written lease agreement with the Owner thereof or with any other person or entity claiming under the Owner.

1.38 Working Capital Assessment. "Working Capital Assessment" as defined in Section 4.6 of this Declaration.

SECTION 2
PROPERTY SUBJECT TO THIS DECLARATION

The Property, each portion thereof, and all Dwelling Units thereon shall be held, transferred, sold, conveyed, leased, mortgaged and occupied subject to the terms, provisions, covenants and conditions of this Declaration.

SECTION 3
ASSOCIATION MEMBERSHIP, MEETINGS AND BOARD

3.1 Membership. Every person who is the record Owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate an Owner's membership. No Owner, whether one (1) or more persons, shall have more than one (1) membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the spouse of a member, but in no event shall more than one (1) person representing a single membership hold office at the same time. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this Section shall restrict the number of votes held by the Declarant.

3.2 Voting. Each Class A Member shall be entitled to one (1) vote for each Lot owned by such Class A Member; provided that any Class A Member with respect to whom a notice of Default has been issued by the Board pursuant to the Declaration, or who has had his/her right or privilege of use and enjoyment of the Common Property suspended pursuant to the Declaration, shall not be entitled to vote during any period in which any such Default or suspension continues; and further provided that if a Lot shall be owned by more than one (1) Lot Owner, such Lot Owners shall be deemed to constitute a single Class A Member as to such Lot for purposes of this Section. The Class B Member shall have seven (7) votes for each Lot owned by Declarant; provided, however, that each Class B Membership shall terminate upon the expiration of the Development Period. Upon termination of the Class B Membership, Declarant shall be a Class A Member.

SECTION 4
ASSESSMENTS

4.1 Creation of Assessments. There are hereby created Assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors, to be commenced at the time and in the manner set forth in this Section. There shall be four (4) types of Assessments which are as follows: (1) Base Assessments to fund Common Expenses for the benefit of all Members of the Association; (2) Special Assessments as described in Section 4.4 below; (3) Specific Assessments as described in Section 4.5 below; and (4) the Working Capital Assessment as described in Section 4.6 below. Each Owner, by acceptance of a deed or recorded

contract of sale for any portion of the Property, is deemed to covenant and agree to pay these Assessments.

(a) No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Property or abandonment of the Dwelling Unit. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

(b) Notwithstanding any provision of this Declaration, the Articles of Incorporation or Bylaws to the contrary, Declarant and Builder, until the expiration of the Development Period, shall not be required to pay any Assessments for any Lot until such Lot has been improved with a Dwelling Unit and has been conveyed to an Owner who intends to occupy the Dwelling Unit or use the Dwelling Unit for residential purposes, or, if the Dwelling Unit is occupied as a residence before such conveyance, the date of such occupancy. Any Dwelling Unit used as a model home shall not be deemed to be used for residential purposes.

4.2 Base Assessment. The Base Assessment shall be levied by the Association against the Owner of each Dwelling Unit, as provided in Section 4.3 below, to be used currently, and to provide an adequate reserve fund for future use, for the improvement, expansion and maintenance of the Common Property, including, but not limited to: (a) the payment of real estate taxes on those portions of the Common Property to which the Association is the record owner; (b) casualty and liability insurance for the Common Property to which the Association is the record owner and fidelity bonds; (c) the cost of repairing and maintaining the landscaping in the Common Property; (d) the cost of supplying water to the Common Property; (e) the costs of operation, maintenance, improvement, and replacement of the Open Spaces; (f) the cost of reasonable reserves for contingencies, replacements and working capital; (g) management fees, if any; (h) organizational costs; (i) legal costs for the enforcement of liens and covenants in this Declaration; and (j) all other costs incurred by Declarant or the Board in the exercise of its powers and duties pursuant to this Declaration for the benefit of the Association (collectively "Common Expenses"). The Base Assessment shall be calculated in accordance with Section 4.3 of this Declaration. The obligation to pay the Base Assessment shall not in any manner be dependent on or discharged, or otherwise affected by the use or non-use of the Common Property or the actual occupancy of any Lot or Dwelling Unit of the Property.

4.3 Computation of Base Assessment. It shall be the duty of the Board, prior to the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital reserve account for the capital replacement, as needed.

(a) The Base Assessment for all Dwelling Units shall commence on the first day of the month following the conveyance of the first Dwelling Unit in the Subdivision from either Declarant or Builder to an individual Owner of a Dwelling Unit.

(b) The Base Assessment to be levied against each Dwelling Unit for the coming year shall be determined by multiplying the total budgeted Common Expenses, including reserves, by a fraction, the numerator of which is the number "1," and the denominator of which is the total number of Dwelling Units subject to Assessment under Section 4.3(a) above.

(c) Notwithstanding the above, the Board may, in its sole discretion, reduce the Base Assessment determined pursuant to the above formula by taking into account the following:

(i) other sources of funds available to the Association; and

(ii) Assessments to be levied upon additional Dwelling Units reasonably anticipated to become subject to Assessments during the fiscal year.

(d) So long as Declarant has the right unilaterally to annex Additional Property pursuant to Section 10.1 below, Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting Base Assessment for any fiscal year by payment of a subsidy; provided, any such subsidy shall be conspicuously disclosed as a line item in the income portion of the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years.

(e) The Board shall cause a copy of the Common Expense budget and notice of the amount of the Base Assessment to be levied against each Dwelling Unit for the following year to be delivered to each Owner at least fifteen (15) days prior to the beginning of the fiscal year. If, in the event the Board fails for any reason so to determine the budget for any year, then and until such time as a budget has been determined by the Board, the budget in effect for the immediately preceding year shall continue. The budget and the Base Assessment shall become effective unless disapproved at a meeting by a majority of the total eligible Association vote and the Declarant. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget has been determined, as provided herein, the budget in effect shall continue.

4.4 Special Assessment. In addition to the other Assessments authorized herein, and to the extent that the reserve fund is insufficient or the Board determines that it is in the best interest of the Members not to withdraw funds from the reserve fund, the Association may levy Special Assessments for the following reasons:

(a) The amount of any operating deficit incurred in any calendar year may be paid by means of a Special Assessment sufficient in an amount so as to allow the

Association to satisfy such deficit in part or in whole, provided that any such Special Assessment shall have been approved in accordance with Section 4.4(c) below.

(b) To the extent that the capital budget is insufficient or in the event there are unanticipated expenses that were not budgeted, the Association may levy Special Assessments to construct, structurally alter, or replace capital improvements which are a part of the Common Property in any fiscal year.

(c) So long as the total amount of Special Assessments allocable to each Lot or Dwelling Unit does not exceed One Hundred Percent (100%) of the Base Assessment for that fiscal year, the Board may impose the Special Assessment without a vote of the Members. Any Special Assessments which would cause the amount of Special Assessments allocable to any Lot or Dwelling Unit to exceed this limitation shall be effective only if approved by a majority vote of the Members present and voting at a meeting duly called for such purpose and the Declarant. Special Assessments shall be paid as determined by the Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed.

4.5 Specific Assessment. The Association, after approval by a majority of the members of the Board, shall have the right to assess an individual Lot or Dwelling Unit for any of the following ("Specific Assessment"):

(a) any costs incurred by the Association for maintenance or repair caused through the willful or negligent act of an Owner or Occupant or their family, Tenants, guests or invitees, including attorney fees, court costs and other expenses incurred;

(b) any costs associated with the enforcement of this Declaration or the Rules and Regulations, if any, of the Association, including, but not limited to reasonable attorneys fees actually incurred and court costs;

(c) costs incurred by the Association for maintenance which is the responsibility of an Owner;

(d) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots may be assessed equitably according to the benefit received;
or

(e) expenses of the Association which benefit less than all of the Lots may be assessed equitably among all of the Lots according to the benefit received.

4.6 Working Capital Assessment. Upon the sale of each and every Lot after it has been improved with Dwelling Unit, a working capital contribution in an amount determined by the Board from time to time, but not to exceed the amount of the Base Assessment applicable to the Lot for the year of such conveyance, shall be collected from the new Owner at the closing of such transaction and disbursed to the Association; or if not collected at closing, shall be paid immediately upon demand to the Association ("Working Capital Assessment"). The Working

Capital Assessment shall constitute an Specific Assessment against the Lot, shall be in addition to, not in lieu of, the Base Assessment and shall not be considered an advance payment of such Base Assessment. The Working Capital Assessment may be used by the Association for any purpose which provides a direct benefit to the Subdivision, including, without limitation, for the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions of this Declaration. Notwithstanding the foregoing, the Working Capital Assessment shall not apply to the holder of any first mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage, but shall apply to the Owner acquiring title to the Lot from the foreclosing mortgagee.

4.7 Common Surplus. If the Base Assessment collected in any given year is in excess of the actual Common Expenses for that year, the Board may, at its sole discretion: (a) return each Owner's share of the surplus; (b) credit each Owner's share of the surplus to each Owner's payment as for the Base Assessment for the following year; (c) apply the surplus to the reserve; or (d) repay any loan obtained by the Board, on behalf of the Association, used to fund any prior years operating deficit as provided for in Section 4.9 below.

4.8 Payment. Unless otherwise established by the Board, the Base Assessment shall be paid in advance in semi-annual installments or as otherwise determined by the Board, but not more than ten (10) days after the due dates established by the Board. The Board shall have the power at any time to adopt such billing, collection and payment procedures and payment time schedules as it shall deem appropriate, which may include acceleration upon ten (10) days written notice for delinquents. Additionally, any Special Assessment or Specific Assessment imposed by the Board shall become due upon the date designated in the notice, but not less than thirty (30) days after the mailing of the notice to the Owner by United States mail. **At the time of closing on a Dwelling Unit from either Declarant or Builder to an Owner who intends to occupy the Dwelling Unit or use the Dwelling Unit for residential purposes, said Owner shall be required to pay the Working Capital Assessment as provided in Section 4.6 above and a prorate share of the Base Assessment for the balance of the semi-annual period in which the closing takes place.**

4.9 Operating Deficit. If during the Development Period the Association incurs an operating deficit, Declarant, Builder or any other affiliated entity of Declarant ("Affiliated Entity"), may, at its option, loan funds to the Association to fund the deficit. In the event that Declarant, Builder and/or Affiliated Entity elects to fund the deficit, the Association shall execute a loan agreement and promissory note for the benefit of Declarant, Builder and/or Affiliated Entity, as the case may be, the form of which shall comply with the terms and conditions set forth in Exhibit D attached hereto and made a part hereof. The Association shall be obligated to repay to the Declarant, Builder and/or Affiliated Entity, as the case may be, any and all monies lent by such entity to the Association in accordance with this Section in order to fund any deficit and such loan shall be evidenced in the Association's annual budget. Such repayment of monies shall be in accordance with the terms and conditions of said loan agreement and promissory note.

4.10 Books and Records of the Association. The Association shall keep full and correct books of account. The Association shall make available to all Lot Owners and the holders of all first mortgages on Lots, current copies of the books, records and financial statements of the Association upon reasonable request during normal business hours in accordance with Section 14-3-1602 of the Georgia Nonprofit Corporation Code. All funds collected by the Association shall be held and expended solely for the purposes designated by this Declaration and shall be deemed to be held for the use, benefit and account of the Association and all of the Lot Owners.

4.11 Penalty for Late Payment. For each Lot as to which any installment of any Assessments are not paid within a period of ten (10) days from its due date, unless otherwise modified by the Board, there shall be added to the installment a penalty in an amount determined by the Board, and interest at the rate of eighteen percent (18%) per annum, or such other amount established by the Board (or, if less, the maximum rate allowable by law) from the due date on the amount of such installment plus penalty until paid.

4.12 Creation of Lien and Personal Obligation of Assessment. All Assessments, together with penalties, interest and costs of collection, including, without limitation, reasonable attorneys' fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and a continuing lien in favor of the Association on the Lot against which each Assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each Assessment, together with penalties, interest and costs of collection, including, without limitation, reasonable attorneys' fees actually incurred, shall also be the personal obligation of the person who was the Owner of the Lot at the time the Assessment fell due. Each Owner shall be personally liable for the portion of each Assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid Assessments of the grantor shall not apply to any first mortgagee taking title through foreclosure proceedings. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent Assessments. As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of Assessments and fees arising hereunder shall also include the costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2).

4.13 Liens; Enforcement. Any Assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such Assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer or conveyance; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any Assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge

and interest as provided in Section 4.11 hereof. As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of Assessments and fees arising hereunder shall also include costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2).

The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the Assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a claim of lien with the Office of the Clerk of Superior Court of Gwinnett County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid Assessments. Each Owner, by acceptance of a deed, vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property and the right to receive and enjoy such services and other benefits as may then be provided by the Association, if any. Notwithstanding the foregoing, any suspension shall not affect such Owner's obligation to pay Assessments coming due during the period of such suspension and shall not affect the permanent lien on such Lot in favor of the Association.

4.14 Evidence of Payment. Any Lot Owner, mortgagee of a Lot, person having executed a contract for the purchase of a Lot, or lender considering the loan of funds to be secured by a Lot shall be entitled upon request to a statement from the Association or its management agent setting forth the amount of Assessments past due and unpaid together with any penalties and interest applicable thereto against that Lot. Such request shall be in writing, shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. The information specified in such statement shall be binding upon the Association and upon every Lot Owner. The Association may, as a prerequisite to the issuance of such a statement, charge a reasonable fee not to exceed Ten and No/100 Dollars (\$10.00) or such higher amount as may be authorized under the law. The intent of the foregoing is to comply with O.C.G.A Section 44-14-15(c), as amended.

4.15 Subordination of Lien to First Mortgage. Notwithstanding anything to the contrary in this Declaration or any other document related thereto or executed in connection therewith, the lien of all Assessments authorized herein is hereby made subordinate to the lien of any first mortgage placed on a Lot if, but only if, all Assessments and charges with respect to such Lot authorized herein having a due date on or prior to the date of the mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to Assessments and charges authorized hereunder having a due date subsequent to the date such mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such mortgage or the sale or transfer of the Lot pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the Lot pursuant to a sale under power contained in such mortgage. Such subordination is merely a subordination and shall not relieve the Owner of the Lot of the personal obligation to pay all

Assessments coming due during such period of ownership; shall not relieve such Lot from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a mortgagee or such mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such Lot to the mortgagee or to any other person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of such Lot of any personal obligation or relieve such Lot or the then Owner of such Lot from liability for any Assessment authorized hereunder that becomes due after such sale and transfer.

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

SECTION 5 ARCHITECTURAL REVIEW

5.1 Alteration of Dwelling Unit and Structures. Except for initial construction of Dwelling Units, accessory Structures and Common Property by either Declarant and/or Builder, no building, fence, wall, deck or other Structure shall be commenced, constructed, erected, placed, moved onto or permitted to remain on any Lot, nor shall any Dwelling Unit and/or Structure on any Lot be remodeled, painted or altered or expanded in any way which changes the exterior appearance thereof, unless detailed plans and specifications therefor shall have been submitted to and approved in writing by the Declarant. Such plans and specifications shall be in such form and shall contain such information as the Declarant may reasonably require, including but not limited to any or all of the following: (a) a site plan; (b) patio and walkway locations; (c) description of materials; (d) location of lighting; (e) architectural plans including cross-sections, floor plans and elevations; and (f) evidence of conformity with building codes. The Declarant shall either approve the plans and specifications, disapprove them, or approve them with conditions or qualifications.

5.1 Approval of Plans and Specifications. The Declarant shall approve plans and specifications submitted to it with respect to any Lot (or subdivision of Lots) if it finds that they comply with the requirements of Section 5.1 above, will further the purposes outlined in this Declaration and meets any Architectural Guidelines adopted by the Declarant. Upon final approval thereof, a certified copy of the detailed plans and specifications shall be deposited for permanent record with the Declarant and a copy bearing the written approval of the Declarant shall be returned to the applicant. Approval by the Declarant of plans and specifications with respect to any Lot shall not impair the Declarant's right subsequently to approve a requested amendment of such plans and specifications relating to such Lot (subject to the requirements of this Section). The approval of the Declarant of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval or consent of the Declarant, shall not be deemed to constitute a waiver of any right to

withhold approval or consent as to any similar proposals, plans and specifications or drawings or matters whatever subsequently or additionally submitted for approval or consent.

5.2 Architectural Guidelines. The Declarant may adopt, amend and modify reasonable architectural guidelines and rules relating to the construction, erection and placement of buildings, fences, walls and Structures in order to fulfill its obligations under this Section 5. Such guidelines and specifications may include but not be limited to building materials, minimum or maximum sizes, dimensions or heights, color schemes, material finishes, locations, setbacks or other reasonable requirements.

5.3 Disapproval of Plans and Specifications. If plans and specifications (whether schematic, preliminary or detailed) submitted to the Declarant with respect to any Lot do not comply with the Architectural Guidelines, if any, and the requirements of Section 5 as to the information required to be included in the plans and specifications, the Declarant shall either disapprove such plans and specifications or approve them subject to such conditions and qualifications as it may deem necessary to achieve compliance.

5.4 Limitation of Liability. Plans and specifications are not approved for engineering or structural design, quality of materials or for compliance with applicable building codes, permitting requirements, zoning conditions or other applicable laws and ordinances governing construction in the Subdivision and by approving such plans and specifications the Declarant, the Association and their respective directors, officers, members, representatives, agents or employees assume no liability or responsibility therefor or for any defect in any Structure or improvement constructed from such plans and specifications or for any violation of applicable building codes, zoning conditions or applicable laws and ordinances governing construction within the Subdivision. Neither Declarant, the Association, nor their respective officers, directors, members, employees, representatives and agents shall be liable in damages to anyone submitting plans and specifications for approval or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans and specifications and every Owner agrees that such person or Owner will not bring any action or suit against the Declarant, the Association or their respective officers, directors, members, employees and agents to recover any damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

5.5 Failure of the Board to Act. If the Declarant shall fail to act upon any plans and specifications submitted to it within ninety (90) days after submission thereof, such plans and specifications shall be deemed to have been approved as submitted, and no further action by the Declarant shall be required. If construction of a Structure is not commenced on a Lot on or before six (6) months from the date of submission of plans and specifications, then such "deemed approval" shall be automatically canceled and a new submission shall be required.

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

5.7 Violations. If any Dwelling Unit and/or Structure situated upon any Lot shall have been constructed, erected, placed, remodeled or altered other than in accordance with the approved plans and specifications, the Board shall give notice of a Default to the Owner of the Lot involved, provided, however, that the Declarant may, upon such conditions as it may determine, waive any such Default if it finds that such Default does not substantially conflict with the policies of the Board.

5.8 Enforcement. Any structure, improvement or landscaping improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant, an Owner shall, at his or her own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to cure any Default, Declarant and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, reasonable attorney's fees actually incurred, may be assessed against the Lot as a Specific Assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Architectural Guidelines may be excluded by the Association from the Subdivision, subject to any applicable notice and hearing procedures contained in the Bylaws. Neither Declarant, the Association nor their respective officers, directors, members, employees and agents shall be held liable to any person for exercising the rights granted by this Section, including, without limitation, claims for damages resulting from the removal of the nonconforming structure or improvement in accordance with the procedures set forth herein. In the event of noncompliance with this Article, the Association or Declarant may also record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, Declarant or the Association, acting through the Board, shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article, including, without limitation, the right to levy and collect fines against non complying Owners and Occupants in accordance with the provisions of 11.1 hereof, subject to applicable notice and hearing provisions set forth in the Bylaws.

5.9 Right of Entry. The Declarant through its authorized officers, employees, and agents, shall have the right to enter upon any Lot at all reasonable times for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling, or alteration of any Dwelling Unit and/or Structure thereon is in compliance with the provisions of this

Section, without the Board or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of such action or actions; provided, however, nothing herein shall authorized entry into a Dwelling Unit without the consent of the Owner thereof.

5.10 Fees. The Declarant may charge reasonable fees to cover the processing of plans and specifications, including inspection costs. Such fees shall be payable at the time of submission of the respective item for approval and shall be paid to the Association.

5.11 Exemptions. This Article shall not apply to: (a) the activities of the Declarant, and affiliates of the Declarant; and (b) improvements to the Common Property made by or on behalf of the Association. In addition to the foregoing, a Builder may submit its standard plans for approval by Declarant hereunder, which approval will not be unreasonably withheld, and thereafter no further approval shall be required under this Section for such Builder to construct improvements on Lots consistent with the approved standard plans.

5.12 Architectural Review By Declarant. Until: (a) the Declarant no longer owns any property in the Subdivision and no longer has the right to unilaterally annex Additional Property to the Subdivision; and (b) each Lot has been improved with a Dwelling Unit, the Declarant shall have the sole right, power and authority under this Section 5. Notwithstanding the foregoing, the Declarant may in its sole discretion relinquish architectural control as to certain types of improvements or modifications to the Board of Directors while retaining control over all other building and construction in the Subdivision; provided, however, any right, power or authority of the Declarant which may be relinquished to the Association prior to the termination of the rights of Declarant hereunder shall only be by a written instrument executed by Declarant and recorded in the Gwinnett County, Georgia land records and no such right, power or authority shall be relinquished by implication or otherwise. For example and without limitation, the Declarant may relinquish control over modifications of existing structures to the Board of Directors while retaining all authority to review and approve new home construction. Upon the surrender in writing of all or a portion of such right and authority, the Board of Directors shall then have such jurisdiction over architectural control under this Article as may have been relinquished by the Declarant. The establishment of an advisory architectural review committee shall not be deemed to be a relinquishment by Declarant of any of its right, power and authority hereunder.

After the termination of all rights of Declarant hereunder, the Board of Directors shall have all right, power and authority to review and approve all building and construction activity within the Subdivision and this Section shall then be read and interpreted as if any reference to the authority of or action by the Declarant in this Section 5 were a reference to the authority of or action by the Board of Directors. The Board of Directors may, but shall have no obligation to, establish an architectural review committee ("ARC"), which shall then have such rights, powers and authority as may be granted to it by the Board of Directors. The Board of Directors may grant to the ARC all of its rights, powers and authorities hereunder, or may grant the ARC such limited rights as it deems appropriate in its sole discretion. In the event that all or any portion of such rights, powers and authorities are granted to an ARC, this Section or portions thereof, as appropriate, shall then be read and interpreted as if any reference to the authority of or action by the Declarant in this Section 5 were a reference to the ARC. Notwithstanding anything herein to

the contrary, the Board of Directors shall have the sole right and authority to appoint and remove the members of the ARC.

SECTION 6

COVENANTS AND RESTRICTIONS OF USE AND OCCUPANCY

6.1 Purposes. In order to promote the health, safety and welfare of all Owners, Members and Occupants, and to preserve, beautify and maintain the Property and all Structures thereon as a subdivision of high quality and to preserve and promote a good environmental quality, the following covenants, restrictions and limitations as to use and occupancy are hereby adopted, declared and established. These covenants and restrictions shall hereinafter burden and benefit all Lots on the Property, shall run with the land, be binding on current and successor Lot Owners, for the benefit of all Lot Owners and all Lots on the Property.

6.2 Covenants and Restrictions. The following are the covenants and restrictions and limitations as to use and occupancy to which the Property is hereby subjected:

(a) Land Use. Except as otherwise provided in this Declaration, no part of the Property other than Common Property shall be used for other than residential housing and any Dwelling Unit constructed on a Lot shall be used only as a residence for a single family. To the extent permitted by law, an Owner of a Lot may use a portion of a Dwelling Unit located thereon for his office or studio provided that the activities therein shall not: (i) interfere with the quiet enjoyment or comfort of any other Owner or Occupant; (ii) do not increase the normal flow of traffic or individuals in and out of the Property or in and out of said Owner's Lot; (iii) be apparent or detectable by sight, sound or smell from the exterior of the Lot; (iv) conflict or violate zoning requirements for the Subdivision; (v) increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (vi) be inconsistent with the residential character of the Subdivision; (vii) constitute a nuisance or a hazardous or offensive use; (viii) threaten the security or safety of other residents of the Subdivision; and (ix) involve door-to-door solicitation within the Subdivision, all as may be determined in each case in the sole discretion of the Board of Directors. The foregoing notwithstanding, Declarant, its successors, assigns and affiliates, and any Builder may use Lots and Dwelling Units for construction offices, sales purposes (i.e. model homes), and as offices to meet with prospective purchasers of Dwelling Units.

(b) Other Structures. No structures of a temporary character, trailer, shack, garage, barn or other temporary outbuilding shall be used or erected on any Lot after the Dwelling Unit on each Lot has been completed. Notwithstanding the foregoing to the contrary, no Structures may be placed on any Lot without the Board's prior written approval, as provided in Section 5.3 above. This Section shall not apply to Declarant or a Builder during the initial construction of a Dwelling Unit located on a Lot.

(c) Parking. No parking spaces, streets or driveways nor any other part of the Common Property nor any Lot upon which a Dwelling Unit is constructed shall be used for the parking of any trailer, truck, boat, or anything other than operative automobiles,

motorcycles or scooters, except while loading, unloading or cleaning which shall not exceed twenty four (24) hours and the temporary removal of such vehicle shall not be sufficient to establish compliance with this restriction. Any of such vehicles may, however, be stored or parked in an enclosed garage provided such garage door is completely closed at all times when such a vehicle is parked therein or in such other area designated by the Board of Directors, if any. The word "trailer" shall include trailer coach, RV, recreational vehicle, house trailer, mobile home, automobile trailer, boat trailer, campcar, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit the use and occupancy thereof for human habitation, for storage, or the conveyance of machinery, tools or equipment, whether resting on wheels, jacks, tires or other foundation. The word "truck" shall include and mean every type of motor vehicle other than passenger cars and other than any non-commercial pick-up truck (no ladder racks, advertising, etc.), sports utility vehicle or van which is used as a principal vehicle by an Owner of a Dwelling Unit or his/her family. Notwithstanding the restrictions in this Section, vehicles being used for the purpose of construction, delivery or repair work to or upon any Lot or Dwelling Unit may be permitted to be parked on any Lot and street in the Subdivision.

No vehicle may be left upon any portion of the Subdivision, except in an enclosed garage or other area designated by the Board, if any, for a period of more than five (5) days if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle may be removed from the Subdivision by the Board of Directors or the appropriate authority of Gwinnett County. Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. No eighteen wheel trucks or the cabs of such trucks or trucks with a load capacity in excess of three-quarters of a ton shall be parked, kept or stored within the Subdivision except as may be reasonably necessary to provide service to or delivery within the Subdivision or as otherwise permitted by the Board of Directors.

All homes shall contain a garage; carports shall not be permitted. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. Garages shall be used primarily for the parking of vehicles and shall not be used primarily for storage or other purposes. Garages shall not be converted to additional living space unless the same has been approved in accordance with Section 5 hereof.

(d) Nuisances. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Lot. No property in the Subdivision, in whole or in part, shall be used for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Subdivision, nor shall anything be done tending to cause embarrassment,

discomfort, annoyance or nuisance to any person using any property within the Subdivision. No plants, animals, device or thing of any sort shall be maintained in the Subdivision whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Subdivision by other Owners and Occupants. Without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, screaming, shouting, excessively loud talking, fighting, raucous behavior, insobriety, playing loud music or television, use of any alarm, equipment, or device, mechanical or otherwise which creates or produces excessively loud sounds or any vibrations, or any conduct which creates any noxious or offensive odors outside a home shall be permitted, located, used, placed, installed or maintained upon any Lot, or any portion thereof. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board. Notwithstanding anything to the contrary herein, each Owner and Occupant acknowledges that the Declarant, Builder and their respective agents, subcontractors and assigns may engage in construction activities on one or more Lots in the Subdivision and each Owner further agrees that such construction activities shall not be deemed a nuisance as provided herein.

(e) Oil and Mining Operations. No oil drilling, quarrying, or mining operations shall be permitted on any Lot.

(f) Garbage and Refuse Disposal. All trash, garbage or other rubbish shall be kept at all times in each Owner's garage, except on the days which the trash, garbage or other rubbish is collected by the local waste removal authorities or as otherwise directed and instructed by the Association. Any trash containers placed outside by the Dwelling Unit Owners to be collected by the local waste removal authorities shall only remain outside for a period not to exceed twenty-four (24) hours and may not be placed at the curb any earlier than 6:00 p.m. the day before the trash is scheduled to be removed. Trash removal and/or recycling shall be subject to such other rules and regulations as the Board may adopt from time to time.

(g) Antennas. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting audio or video signals shall be placed, allowed or maintained upon any portion of the Subdivision, including any Lot, unless approved in accordance with the provisions of Section 5 hereof or as otherwise permitted by the Architectural Guidelines; provided, however, no such approval shall be necessary to install the following on a dwelling located on a Lot: (i) antennae designed to receive direct broadcast satellite services, including direct-to-home satellite services or antennae designed to receive or transmit fixed wireless signals via satellite, that are one meter or less in diameter; (ii) antennae designed to receive video programming services via multi-point distribution services or antennae designed to receive or transmit fixed wireless signals other than via satellite that are one meter or less in diameter or diagonal measurement; or (iii) antennae that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the

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

(h) Signs. No permanent sign shall be permitted on any Lot or building in the Subdivision. An Owner of a Dwelling Unit is permitted to place the following signs on a Lot without approval under Article 5 hereof: (i) one standard "For Sale" or "For Rent" sign; provided, however it is of a typical size within the industry and consistent with the Subdivision-Wide Standard; (ii) security signs consistent with the Subdivision-Wide Standard; (iii) signs required by legal proceedings; and (iv) other signs permitted under the Architectural Guidelines. This sign restriction shall not apply to signs used by Declarant and/or Builder or their assigns, while Declarant and/or Builder are selling Dwelling Units in the Subdivision, or to traffic, street names, Common Property or subdivision identification signs. The Board of Directors shall have the right to adopt rules and regulations governing the display and placement of signs in the Subdivision, including, without limitation, imposing reasonable time, place and manner restrictions. The Board or Declarant may impose a fine of One Hundred Fifty and No/100 Dollars (\$150.00) per day for the display of any sign which violates this provision and is not removed within twenty-four (24) hours after written demand is delivered to the Owner at that Lot. Notwithstanding the foregoing, the provisions of this Section shall not apply to any mortgagee in possession due to foreclosure of a first mortgage or as grantee pursuant to any deed in lieu of such foreclosure.

(i) Animals. No animals of any kind shall be raised, bred, or kept on any Lot including the Common Property, except that dogs or other household pets not totaling more than three (3) in number, may be kept on a Lot, subject to the Restrictions, provided that it is not kept, bred or maintained for any commercial purpose, and provided that it is kept subject to the rules and regulations, if any, of the Association. All Owners must control their pets at all times, whether or not such Owner is present, in a manner that will prevent any pet from: (i) making noise at objectionable sound levels for extended periods of time, whether continuously or intermittently; (ii) endangering the health or safety of other Owners, their families, guests or invitees or creating fear in other Owners as to the safety of themselves, their families, guests or invitees; or (iii) otherwise constituting a nuisance or inconvenience to the Owner(s) or Occupant(s) of any other Lot; all of the foregoing as determined by the Association in its sole discretion. The Association may require that an Owner remove any animal that presents an actual threat to the health or safety of residents and require abatement of any nuisance or unreasonable source of annoyance. In the event that the Owner fails to remove an animal as provided herein, the Association shall have the right to institute legal action to have the animal removed and all costs associated therewith shall be an Specific Assessment against the Lot of such Owner.

Dogs must be kept within the confines of the Owner's Lot except when being held on hand leash by the person attending the animal when outside a Lot. A Lot Owner shall be responsible for cleaning up after his/her household pet. Notwithstanding the foregoing, the Association shall have the right to promulgate reasonable rules and

regulations pertaining to household pets and the right to levy fines and enforcement charges against persons who do not clean up after their pet.

(j) Laundry or Rubbish. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Property. No clotheslines shall be located on any Lot. The Property shall be kept free and clear of rubbish, debris and other unsightly materials.

(k) Rental of Dwelling Units. The Owners of a Dwelling Unit or any first mortgagees in possession thereof shall have the right to lease the same subject to the covenants and restrictions in the Declaration and the Bylaws and rules and regulations, if any. However, neither a Unit Owner nor any first mortgagee in possession shall lease less than an entire Dwelling Unit nor shall any Dwelling Unit be leased for a term of less than six (6) months. The respective Dwelling Unit shall not be rented for transient or hotel purposes, which shall be defined as: (i) rental for any period less than ninety (90) days; or (ii) any rental if the occupants of the Dwelling Units are provided customary hotel service such as room service or food and beverage, maid service and furnishing of laundry and linen. All leases of any Dwelling Unit shall be in writing. All such leases shall provide that the Tenants and all Occupants of the Lot are subject to all the provisions of the Declaration, the Bylaws and the rules and regulations and Architectural Guidelines, if any, and that any failure of the Tenant to comply with any such provision shall constitute a default under the lease. In the event that the Tenant or any other Occupant of a Lot violates the Declaration, Bylaws or any rules and regulations or Architectural Guidelines for which a fine is imposed, notice of the fine shall be given to the Owner and the Tenant and such fine may be assessed against the Tenant in accordance with the Declaration and Bylaws. If a fine is not paid by the Tenant within the time period established by the Board, the Owner shall pay the fine upon notice from the Association of the Tenant's failure to pay such fine. Unpaid fines shall constitute a lien against the Lot.

Within seven (7) days of entering into a lease agreement for the lease of a Lot, the Owner shall provide the Board with the following information: (i) a copy of the fully executed lease agreement; (ii) the name and address of the Tenants and any other Occupant(s); (iii) the name, address and telephone number of the Owner other than at the Lot; and (iv) such other information as the Board may reasonably require.

If an Owner who is leasing his or her Lot fails to pay any 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 Tenant during the period of delinquency, and, upon request by the Board of Directors, Tenant shall pay to the Association all unpaid Assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by Tenant. However, Tenant 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 of Director's request. All such payments made by Tenant shall reduce, by the same amount, Tenant's obligation to make monthly rental payments to lessor. If Tenant fails to comply

with the Board of Director's request to pay Assessments or other charges, Tenant shall pay to the Association all amounts authorized under the Declaration as if Tenant were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for Assessments, for which he or she would otherwise be responsible.

(l) Swimming Pools, Hot Tubs and Spas. No above-ground swimming pools shall be constructed, erected, placed or permitted to remain upon any Lot; provided, however, portable swimming pools designed for use by small children shall be permitted so long as they are stored out of view when not in use. In-ground swimming pools are permitted provided they are approved pursuant to Section 5 hereof. This Section shall not prohibit the construction, erection or placement of a diving board, slide or other equipment appurtenant to an otherwise conforming swimming pool. Hot tubs and spas shall be permitted on any Lot but must be in-ground or if above ground shall not be visible from the street or any neighboring Lot.

(m) Fencing. No fences shall be erected or built on any part of any Lot between the rear of the Dwelling Unit and the street in front of such Dwelling Unit. Fences erected on said Lot from the rear of the Dwelling Unit and the back property line shall not be in excess of six (6) feet in height and shall be rustic rail, split rail, decorative PVC, ornamental iron, decorative wood, decorative metal or hedge, provided however, that all fences constructed of the aforesaid materials shall be at least fifty percent (50%) open. Non-reflective metal fences may be installed as an integral part of a fence constructed of the aforesaid materials in order to provide a secure enclosure. Barbed wire, chain link or similar fences shall be prohibited. On a corner Lot, the section or sections of fence running adjacent to the side street shall not extend closer to said side street at any point than the Dwelling Unit on said Lot. Notwithstanding anything to the contrary, any fence installed on a Lot must be approved pursuant to Section 5 hereof. Entrance designations, fences and any other Structure erected by Declarant, Builder and/or the Association are exempt from this Restriction.

(n) Swing Sets and Play Areas. Swing sets, trampolines, basketball backboards and play areas may be erected on a Lot only after the location and materials of those Structures are approved in writing pursuant to Article 5 hereof.

(o) Building Setbacks. No building shall be located nearer to any street than the building setback line shown in the Record Plat of the Subdivision, except as constructed by Declarant or Builder.

(p) Lawns. No weeds, underbrush or unsightly growths or objects of any kind shall be permitted to remain on any Lot within the Subdivision. All lawn areas shall be maintained in a neat and orderly manner consistent with the Subdivision-Wide Standard and shall be mowed on a regular basis. Lot areas left in a naturalized state by the Builder may be left in such naturalized state by the Lot Owner.

(q) Obligation to Keep Dwelling Unit in Good Condition. Each Lot Owner or Occupant shall keep each his/her Dwelling Unit and all Structures located on his/her Lot in good order, condition and repair and such maintenance, repair, appearance and condition shall comply with the provisions of this Declaration and applicable laws and ordinances and be consistent with the Subdivision-Wide Standard.

(r) Mailboxes. Declarant or Builder reserves the right to establish a standard design for mailboxes for use by all Lot Owners. The decision of the type of material to be used by each Owner shall be at sole discretion of Declarant and/or Builder. Lot Owners shall be responsible for maintenance of their individual mailboxes. Declarant and/or Builder may however, waive this right or establish the use of cluster mailboxes.

(s) Additional Restrictions. As the Additional Property is annexed to the Property by means of a Supplemental Declaration, Dwelling Units or Lots within specific phases may be subject to additional covenants, rules and regulations established by Declarant at such time as such Dwelling Units or Lots are annexed to the Property.

(t) Lot Grading. Neither the Owner nor anyone claiming under the Owner shall alter elevations and grades established by Declarant for any building Lot without the prior written approval of Declarant and/or Declarant's designee during the Development Period; and, the prior written approval under Section 5 hereof. The purpose of this Restriction is to insure that the surface drainage plan originally established by Declarant for sheet surface drainage and drainage swales over the yard areas of Lots is not altered or impeded. Landscaping or plantings shall not be installed or maintained in such a manner as to impede sheet surface drainage or swale drainage.

(u) Flags. No flags may be displayed on any Lot without prior written approval in accordance with the provisions of Article 6 hereof or as may be otherwise permitted in the Architectural Guidelines established thereunder; provided, however no such approval shall be required to display the flag of the United States of America and the current flag of the State of Georgia on a Lot in accordance with the provisions of the U.S. Flag Code (36 US Code 10) and usual and customary practice. The Board of Directors may promulgate reasonable rules and regulations with respect to the display of flags in the Subdivision, including, without limitation, regulating the size of flags that may be displayed and imposing reasonable time, place and manner restrictions pertaining to the display of the United States flag; provided, however, the Association shall not enact any rule or regulation which has the effect of prohibiting any Owner from displaying the flag of the United States of America on a Lot in the Subdivision in contravention of the Freedom to Display the American Flag Act of 2005.

(v) Storm Water Detention/Retention Ponds. Except as herein provided, the storm water retention/detention ponds within the Subdivision shall be used for aesthetic amenities and storm water drainage only, no other use thereof, including, without limitation, swimming, ice skating, playing, or use of personal flotation devices, and other recreation, shall be permitted, without the written consent of the Board of Directors. The Association, the Declarant and their respective representatives, agents, employees,

officers or directors shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the storm water detention/retention ponds or any other body of water located within the Subdivision. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any storm water detention/retention pond or any other body of water. Applicable governmental agencies, the Declarant and the Association, shall have the sole right to control the water level of all bodies of water located within the Subdivision and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any storm water retention pond within the Subdivision. Owners shall not be permitted to withdraw water from any storm water detention/retention pond in the Subdivision.

(w) Stream Buffer. Land-disturbing activities shall not be conducted within any stream buffer area as shown on the recorded subdivision plats for the Community, except with prior written approval under Section 5 hereof and compliance with Georgia law, including without limitation, the Control of Erosion and Sedimentation Act, O.C.G.A. Section 12-7-1, *et seq.*, as amended from time to time.

(x) Open Space Conservation Area. The Association, the Declarant and their respective offices, directors, employees, representatives and agents shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of any Primary Conservation Area or Secondary Conservation Area within the Subdivision (collectively, "Conservation Areas"), as such areas are identified on the Recorded Plat or otherwise designated as such by the Declarant or the Board of Directors. The Conservation Areas may be encumbered by a conservation restriction so that they remain permanently protected and will not be disturbed, cleared or developed except in accordance with Section 1316.6.b of the 1985 Zoning Resolution of Gwinnett County and with Georgia Law O.C.G.A. § 36-22-1 *et seq.*, having the following Greenspace goals: protection of streams, floodplains and wetlands; steep slopes; woodlands, open fields and meadows; historical and archeological features; significant wildlife habitats; scenic vistas; passive recreation and connectivity with nearby open spaces.

No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any Conservation Area. The Conservation Areas shall remain primarily as undisturbed natural areas; provided however, the Conservation Areas may be used for passive recreational and easement purposes consistent with site specific zoning conditions for the Subdivision. Applicable governmental agencies, the Declarant and the Association, shall have the sole right to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around the Conservation Areas. The Board of Directors may issue rules and regulations on the permissible use of the Conservation Areas, by Owners, Occupants and guests which rules and regulations shall not be inconsistent with the purposes and intentions of the conservation zoning ordinance(s) of Gwinnett County, as the same may be amended and supplemented from time to time.

SECTION 7
MAINTENANCE STANDARDS

7.1 Adoption and Amendment. Declarant during the Development Period, and after the Development Period, the Board shall have the right to adopt, and may from time to time amend, Maintenance Standards pertaining to the maintenance, repair and appearance of all Lots, and the exterior of all Dwelling Units and Structures thereon. If any provision of any applicable building inspection, or similar maintenance statute, ordinance, resolution, regulation or order of the State of Georgia or Gwinnett County, or the Board, is more stringent with regard to a Lot than a comparable provision of the Maintenance Standards, such more stringent provision shall be deemed incorporated in the Maintenance Standards. The Maintenance Standards shall provide, among other things, that:

(a) except as otherwise hereinafter provided, the Association shall be responsible for maintenance, repair and replacement of the Common Property and all Structures thereon;

(b) except as otherwise hereinafter provided, the Association shall be responsible for the maintenance and general upkeep of all lawns and landscaping in the Common Property owned in fee simple by the Association, which shall include, but not limited to, mulching the landscaping beds, cutting the grass and keeping all lawns and landscaping beds in a neat and orderly manner, the cost of which shall be a Common Expense of the Association;

(c) each Owner shall maintain, repair and replace at his expense all portions of the Common Property which may be damaged or destroyed by reason of his/her own intentional or negligent act or omission or by the intentional or negligent act or omission of any invitee, Tenant, licensee, employee, agent, family member, guest, and/or pet(s) of such Owner; provided, however, in the event an Owner or Occupant damages the Common Property and fails to maintain, repair or replace the same as provided herein, the Association shall have the right to provide such maintenance, repair and replacement and assess all costs associated therewith as an Specific Assessment;

(d) the obligation of the Association and of the Owners to repair, maintain and replace the portions of the Property for which they are respectively responsible shall not be limited, discharged or postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in material or workmanship in the construction of the Property;

(e) notwithstanding the fact that the Association and/or any Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of any construction guarantee or insurance coverage shall not excuse any delay by the Association or by any Owner in performing its or his obligation hereunder; and

(f) except as otherwise provided above in this Section 7.1, each Owner shall maintain, repair and replace at his/her expense all portions of each Dwelling Unit and Structure located on each Lot owned by him/her and all internal and external installations of such Lot such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the boundaries of or serving the Lot.

7.2 Obligation to Keep Premises in Good Repair. Each Owner during his/her period of ownership and, during his/her tenancy, each Tenant leasing a Lot, shall keep each Lot, Dwelling Unit and all Structures thereon owned or leased by him/her in such maintenance, repair and appearance as shall comply with the Maintenance Standards.

7.3 Periodic Inspection. Periodically as needed, the Association may inspect each Lot and the exterior of the Dwelling Unit and all Structures thereon to determine whether each complies with the Maintenance Standards and the Declarant or the Association or such officer, employee agent or representative shall not be deemed to have committed a trespass. After each such inspection, the Association shall, if any defects are found, issue an inspection report to the Owner with a copy to the Tenant, if applicable, listing such defects, if any, and the reasonable time within which they may be corrected. Such Owner shall correct such defects or cause them to be corrected within such reasonable period as is stated in the inspection report. In the event that an Owner fails to correct such defects, the Association shall have the right to enter such Lot to cure such defects as provided in Section 11.3 hereof and all costs associated therewith shall be an Specific Assessment against the Lot.

7.4 Drainage Swales. Neither the Owner nor anyone claiming under the Owner shall, except in an emergency, alter the location or grade of any open storm water drainage way on any Lot without the prior written consent under Section 5 hereof.

7.5 Utility Company Right of Entry. Any bona fide utility company, through its authorized officers, employees, and agents, shall have the right to enter upon the Common Property or upon any utility easements located on any Lots, for the purpose of installing, repairing or servicing any of its equipment, or for reading meters, without Board approval; provided, however, that if any such activities by the utility require alteration to or displacement of any waterscaping, landscaping, grass, sidewalks, fences, garages, or other Structures, then the prior approval of the Board shall be required.

7.6 Failure to Comply. Failure to comply with the Maintenance Standards or to correct the defects listed in any inspection report issued by the Association or to pay any fee hereunder shall constitute a Default, in which event Declarant or the Board shall have the right to enforce this Section by any proceedings authorized in this Declaration, Bylaws or rules and regulations, if any.

SECTION 8
COMMON PROPERTY AND EASEMENTS

8.1 Description of Common Property. The Common Property in the Subdivision shall include, but not be limited to: the Recreational Facilities; Open Spaces; Landscape and Signage Easements; Private Storm Sewer Easements and any other easements for open space, landscaping areas and mounding, water retention/detention basins, common area utility easements, storm sewer and surface water drainage easements, water main easements, sanitary sewer easements, preservation areas, and private drainage easements; all as are or may be located, described and shown on the Record Plats. Declarant and/or Builder may also create other Common Property not now in existence but that might in the future be added, located and shown on any subsequent Record Plat.

8.2 Rights of Enjoyment in Common Property. Except as herein otherwise provided, each Owner shall have a right and nonexclusive easement for use and enjoyment of the Common Property, and such right and easement shall be appurtenant to, and shall pass with the title to his/her Lot. Each Tenant shall have a nontransferable right to use and enjoy the Common Property, if any, which right shall terminate when such person ceases to have the status of a Tenant. Such rights and privileges shall be subject, however, to the following:

(a) The right of the Board to borrow money for the purpose of constructing, equipping, improving and maintaining the Common Property and, with the approval of sixty-seven percent (67%) of the Class A Members and the Class B Member, in aid thereof to mortgage the Common Property.

(b) The right of the Board to adopt and enforce and from time to time amend reasonable limitations upon use and Rules and Regulations pertaining to the use of the Common Property, including regulations limiting guests of Owners and Tenants who may use the Common Property at any one time.

(c) The right of the Board to suspend the right of any Owner or the privilege of any Occupant to use such of the Common Property that are recreational in nature as determined by the Board for any infraction of the Rules and Regulations relating to the Common Property for a period not to exceed sixty (60) days for each such infraction, or for nonpayment or delinquency of the Assessments against such Owner's Lot for a period not to exceed the period of such nonpayment or delinquency.

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

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

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

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

8.3 Subordination to Mortgage or Other Lien. The rights and privileges provided in this Section shall be subordinate to any mortgage or other lien given by the Association for the purposes of acquiring, improving or maintaining the Common Property.

8.4 Conveyance of Common Property by Declarant to Association; No Implied Rights. Declarant may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and, if and as provided in Sections 7.1 and 9.1 hereof, maintained by the Association for the benefit of its Members. So long as Declarant owns any property primarily for development and/or sale in the Subdivision or has the right unilaterally to annex Additional Property to the Declaration, Declarant may, upon written notice to the Association, require the Association to reconvey to Declarant all or any portion of the Common Property, improved or unimproved, at no charge to Declarant, without a vote of the members of the Association, if all or any portion of the Common Property is: (a) found by Declarant to have been conveyed in error; (b) needed by Declarant to make adjustments in property boundary lines; or (c) reasonably determined by Declarant to be needed by Declarant due to changes in the overall scheme of development for the Subdivision.

The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept on behalf of the Association any such conveyance to the Association, to reconvey any such property on behalf of the Association and to execute on behalf of the Association any and all documents, including, without limitation, deeds, necessary or convenient to effectuate and document any such conveyance to or reconveyance from the Association. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. Declarant may reserve, by lease, license, easement or otherwise, such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Subdivision. Neither a Recorded Plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant to the Association or the Owners, as the case may be, by an instrument recorded in the Gwinnett County, Georgia land records.

8.5 Partition. The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of: (a) all Owners of all portions of the property located within the Subdivision; and (b) all holders of all mortgages encumbering any portion of the property, including, but not limited to, the Lots located within the Subdivision.

8.6 Liability. Owners, Occupants, Tenants and their guests shall use the common areas maintained by the Association and all other Common Property and all portions of the Subdivision not contained within a Lot, including, without limitation, the Open Space, at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. All Owners and Occupants shall have an affirmative duty and responsibility to inspect the Common Property and all portions of the Subdivision not contained within a Lot for any defects, perils or other unsafe conditions relating to the use and enjoyment thereof. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for: (a) personal injury to any person occurring on the Common Property; (b) loss or damage to personal belongings used or stored on the Common Property or on any other portion of the Subdivision; or (c) loss or damage, by theft or otherwise, of any other property of such Owner or Occupant.

The Association, the Declarant nor their respective officers, directors, employees, representatives and agents shall not be liable for injury or damage to any person or property: (a) caused by the elements or by an Owner or any other person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association or from any portion of the Common Property, or (c) caused by any street, pipe, plumbing, drain, pond, lake, dam, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair.

8.7 Use of Common Property by Declarant and Builder. Declarant and Builder and its affiliates and associates shall have the same rights of use and enjoyment of the Common Property as the Class A Members during the Development Period, and shall have the right to use the Common Property for promotional, sales and similar purposes until all of the Dwelling Units planned for the Subdivision have been sold.

8.8 Easements.

(a) In the event that, by reason of the construction, settlement or shifting of any of the Dwelling Units or other Structures located on Lots or by reason of the partial or total destruction and rebuilding of the buildings, any part of the Common Property presently encroach or shall hereafter encroach upon any part of a Lot; or any part of a Dwelling Unit presently encroaches on or shall hereafter encroach upon any part of the Common Property or any other Lot; or, if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving more than one Dwelling Unit presently encroach or shall hereafter encroach upon any part of any Dwelling Unit or Lot, valid easements for the maintenance of each encroachment and for the use of such

adjoining space are hereby established. These easements shall exist during the term of this Declaration for the benefit of such Lot or Dwelling Unit and the Common Property, as the case may be. However, in no event shall a valid easement for any encroachment be created in favor of any Owner if such encroachment occurred due to the willful conduct of said Owner.

(b) The Association may hereafter grant easements for utility purposes for the benefit of the Property, including the right to install, lay, use, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits and wires over, under, along and on any portion of the Common Property, and each Owner hereby grants the Association an irrevocable power of attorney to execute, acknowledge, deliver and record, for and in the name of such Owner, such instruments as may be necessary to effectuate the foregoing.

(c) Declarant hereby reserves easements and the right to grant easements on, over and across certain Lots for open space, landscaping mounding and monument areas and for the installation, maintenance, use, repair and replacement of underground utilities, public utilities, water detention basins, storm sewer, sanitary sewer and surface water drainage easements, water mains, preservation areas and private drainage easements, and building setbacks, specifically as shown on the Record Plats now or hereinafter recorded for the Subdivision, and to cut and grade slopes in and along Lot boundaries at streets and drives built within the Property. The foregoing easements shall not be used for recreations purposes but are reserved for such aesthetic or utility purposes as indicated by the nature of the easement.

(d) All easements and rights described in the Declaration are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on Builder, its successors and assigns, and any Owner, purchaser, mortgagee and other party now or hereafter having an interest in the Property, or any part or portion thereof. After the Development Period, the Association shall be deemed to be the successor of Declarant and, as such, shall be deemed to be the grantee of said easements provided in this Section, and shall hold such easements for the use, benefit and enjoyment of all Lot Owners in the Subdivision. All notes on the Record Plat that are pertinent to the specific easements set forth herein are incorporated herein by reference.

8.9 Easements for Utilities. There is hereby reserved to the Declarant and granted to the Association a blanket easement upon, across, above and under all property within the Subdivision for access, ingress, egress, installing, altering, repairing, replacing, and maintaining all utilities serving the Subdivision or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant or the Association might decide to have installed to serve the Subdivision. Declarant or the Association or their respective designees, as the case may be, may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repair, replacement and maintenance of such wires, conduits, cables and other

equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board shall have the right to grant such easement. The Board of Directors, without a vote of the Owners, shall have the right, power and authority to grant permits, licenses, utility easements, and other easements, permits or licenses necessary or desirable for the proper maintenance and operation of the Subdivision under, through, or over the Lots, and/or the Common Property, as may be reasonably necessary to or desirable for the ongoing operation of the Subdivision.

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

8.11 Easement for Drainage. There is hereby reserved by the Declarant and granted to the Association an easement upon, across, above and under all storm water drainage easement areas as shown on the recorded subdivision plat(s) for the Subdivision for access, ingress, egress, installation, alteration, repair, replacement, and maintenance of the storm water drainage system and related facilities serving the Subdivision or any portion thereof. This easement shall include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. In addition, there is hereby reserved to the Declarant and granted to the Association a blanket easement across all Lots for creating and maintaining satisfactory drainage in the Subdivision; provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the dwelling structure. It is anticipated that increased storm water run-off across downstream Lots will result from the construction of impervious surfaces within or adjacent to the Subdivision. Neither the Declarant, the Association nor any Owner constructing according to plans and specifications approved under Article 6 hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction within the Subdivision.

8.12 Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, Architectural Guidelines, and amendments or revisions thereto, Declarant reserves an easement across the Subdivision for Declarant and Builder to maintain and carry on, upon such portion of the Subdivision as Declarant may reasonably deem necessary, such facilities and activities as Declarant in its sole opinion may be required or

convenient for Declarant's and Builder's development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or for the development, construction or benefit of any neighboring property, including, but not limited to: (a) the right to place or authorize the placement of marketing and directional signs on Lots or rights-of-way at street intersections within the Subdivision; (b) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Subdivision, including, without limitation, any Lot; (c) the right to tie into any portion of the Subdivision with streets, driveways, paths, parking areas and walkways; (d) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Subdivision; (e) the right to grant easements over, under, in or on the Subdivision, including without limitation the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Subdivision; (f) the right to convert Lots (with the consent of the Owner thereof) to Common Property and/or streets; (g) the right to construct Recreational Facilities, utilities and other improvements on Common Property; (h) the right to carry on sales and promotional activities in the Subdivision; and (i) the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant and Builder may use residences, offices or other buildings its owns or leases as model residences and sales offices. This Section shall not be amended without the Declarant's written consent until the Development Period has terminated.

8.13 Easements to Other Residents. Declarant may designate that certain owners of real property outside of the Property and such other persons as Declarant may designate, shall have an easement of enjoyment in and over the Common Property or specific Common Property, and the facilities located thereon, to the same extent as any Owner, subject to the provisions of Section 8.2. Such individuals shall be subject to the Rules and Regulations of the Association concerning the use of said Common Property, but shall not be subject to Assessments by the Association. The Association may, if appropriate, and at the sole discretion of the Board of Directors, charge a fee to such individuals for the use of such Common Property.

SECTION 9 **MAINTENANCE**

9.1 Association's Responsibility. The Association shall maintain and keep in good repair the Areas of Common Responsibility, such maintenance to be funded as hereinafter provided. The Areas of Common Responsibility shall include, but need not be limited to entry, landscaping and signage easements; water retention/detention basins; common area utility easements, storm sewer and surface water drainage easements; preservation areas; all landscaping and other flora, structures, and improvements, situated upon the Common Property; landscaped medians within public right-of-way throughout the Property; the Open Space; and such portions of any Additional Property included within the Areas of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or by a contract or agreement for maintenance thereof by the Association. The Association may maintain other

property which it does not own or share in the maintenance of Property it does not own, including, without limitation, property dedicated to the public or property owned by another homeowners' association, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Subdivision-Wide Standard and shall have the right to enter into easements and covenant to share cost agreements where the Board has determined that such action would benefit the Owners.

(a) There are hereby reserved to the Association blanket easements over the Property as necessary to enable the Association to fulfill responsibilities under this Section.

(b) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Areas of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, subject to the right of the Association to seek reimbursement from the Owner(s) of, or other persons responsible for, certain portions of the Areas of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the Owner(s) thereof; provided, however, in the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, shall be assessed against the Lot of such Owner as an Specific Assessment. All maintenance by the Association shall be performed consistent with the Subdivision-Wide Standard.

9.2 Owner's Responsibility. Each Owner shall maintain his or her Dwelling Unit and all Structures, and other improvements comprising the Dwelling Unit and all portions of the Lot including all landscaping, Structures and improvements located thereon. Owners of Dwelling Units adjacent to any roadway within the Property shall maintain driveways serving their respective Dwelling Units, whether or not lying within the Dwelling Unit boundaries, and shall maintain and irrigate landscaping on that portion of the Common Property, if any, or right-of-way between the Dwelling Unit boundary and the back-of-curb of the adjacent street.

All maintenance required by this Section 9.2 shall be performed in a manner consistent with the Subdivision-Wide Standard and all applicable covenants.

In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable period of time. If an Owner does not

comply with the provisions hereof, the Association may provide such maintenance, repair or replacement to the Lot and all costs thereof shall be assessed against the Lot of such Owner as an Specific Assessment. This provision shall not apply to any Lot(s) owned by the Declarant or Builder, unless improved with a dwelling and occupied as a residence.

9.3 Professional Management Contracts. The Association may delegate all or any portion of its authority, subject to the Board of Directors supervision, to discharge its responsibilities herein to a manager or managing agent. Any management agreement shall not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

SECTION 10

COVENANT FOR STAGED DEVELOPMENT

10.1 Staged Development. Declarant reserves the right at any time within the Development Period to remove any portion of the Property from the scope of the Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Subdivision, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Subdivision, or to make subject to or annex any portion of the Additional Property to this Declaration without the consent of the Members of the Association. However, Declarant is not bound to annex any of the Additional Property to this Declaration, and until such time as any of the Additional Property is annexed, the same shall not be subject to the provisions of this Declaration.

Any withdrawal shall be accomplished by the filing for record of an amendment to this Declaration which: (a) describes the property to be removed; and (b) is executed by the Declarant and the Owner(s) of the property being removed, if not the Declarant. The amendment shall be effective upon the filing for record in the Office of the Clerk of Superior Court of Gwinnett County, Georgia unless a later effective date is provided therein. Notwithstanding anything to the contrary herein, any withdrawal shall require the consent of the Declarant and the Owner of the property as provided herein and shall not require the vote or consent of any Lot Owners in the Subdivision.

10.2 Total Dwelling Units. The total number of Dwelling Units or Lots for the Property and the Additional Property shall not exceed the total number of Dwelling Units and Lots authorized by the zoning authority having jurisdiction over the development of the Property.

10.3 Supplemental Declaration for Staged Development. Any annexations made pursuant to this Section 10, or otherwise, shall be made by recording a supplement to this Declaration in the Gwinnett County, Georgia land records, which supplementary Declaration shall extend this Declaration to such annexed property. The supplementary Declaration may either waive some of the existing covenants, conditions and restrictions or contain additional covenants, conditions, restrictions, easements and liens with respect to that Additional Property being annexed therein as either Declarant shall deem appropriate for the purpose of completing the development of the Property. Owners of Lots subject to such supplemental Declaration shall be Owners as defined by this Declaration.

SECTION 11 **ENFORCEMENT**

11.1 Curing Defaults; Lien. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations, use restrictions and Architectural Guidelines, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the Recorded Plat(s) and in the deed to such Owner's Lot, if any. In the event of any Default with respect to any Lot under this Declaration, the Board shall give written notice to the Owner thereof, with a copy of such notice to each Tenant in Default and a copy to any first mortgagee of the Lot who has requested to receive such notices, setting forth with reasonable particularity the nature of such Default, and the specific action or actions required to remedy the Default. If the Owner or Tenant shall fail to take the specific action or actions within ten (10) days after the mailing of the notice, the Board may, but shall not be required to exercise any or all of its rights hereunder, including, without limitation, the imposition of monetary fines as set forth below. The Board may exercise without notice any of its rights hereunder with respect to any Default if it determines that an emergency exists requiring immediate action.

The Declarant or the Association, acting through the Board of Directors, may impose fines or other sanctions for violations of the foregoing in accordance with this Declaration and the Bylaws, which fines shall be collected as provided herein for the collection of Assessments; provided, however, only one fine may be imposed for a single violation such that an Owner or Occupant may not be fined by Declarant and the Association for the same violation; and provided, further, the Declarant or the Association, as the case may be, may count each day a violation continues after notice thereof as a separate violation. In the event fines or other sanctions are imposed by Declarant, Declarant shall have any and all rights to collect such fines or sanctions (which fines shall be payable to the Association) and any related charges, including, without limitation, attorney's fees actually incurred and costs of collection, in the same manner as provided herein for the collection of Assessments by the Association acting through the Board.

Failure to comply with this Declaration, the Bylaws, the use restrictions, rules and regulations or the Architectural Guidelines shall be grounds for an action to recover sums due for damages or injunctive relief or both, including, without limitation, reasonable attorney's fees actually incurred, maintainable by the Association, Declarant, or an aggrieved Owner. The failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. Declarant and the Association shall have the right to record in the Gwinnett County, Georgia land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or Architectural Guidelines and to assess the cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

11.2 Remedies. Nothing contained in this Section 11 shall be deemed to affect or limit the rights of Declarant, Builder, the Association, any Owner, Occupant, or their legal representatives, heirs, devisees, successors or assigns, by appropriate judicial proceedings, to enforce the restrictions, or recover damages for any Default. It is hereby declared that irreparable harm will result to beneficiaries of this Declaration by reason of a Default, and,

therefore, each beneficiary shall be entitled to relief by way of injunction or specific performance to enforce the provisions of this Declaration, as well as any other relief available at law or in equity.

11.3 Right and Easement of Entry. The Association, through its authorized officers, employees, and agents, shall, upon ten (10) days written notice, have the right and easement to enter upon any Lot at all reasonable times and to do anything thereon necessary to perform the action or actions specified in the notice to the Owner to abate, remedy, extinguish, remove or repair a Default, without the Association or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of each entry or such action or actions as are carried out in accordance with the provisions of this Section 11, provided that no summary abatement or similar procedure may be utilized through non-judicial means to alter or demolish items of construction. All costs incurred as a result of the Association entering a Lot shall be an Specific Assessment against the Lot of such Owner.

11.4 No Waiver. The failure of Declarant, Builder, the Association, any Owner, Tenant, or their legal representatives, heirs, devisees, successors or assigns, in any one or more instances, to insist upon compliance with any of the Restrictions, or to exercise any right or privilege conferred in this Declaration, shall not constitute or be construed as the waiver of such or any similar restriction, right or privilege, including the right to cure Default, but the same shall continue and remain in full force and effect as if no such forbearance had occurred.

11.5 Rules and Regulations. The Board may adopt and enforce, and from time to time amend, reasonable rules and regulations regarding the administration, interpretation and enforcement of the Restrictions (the "Rules and Regulations"). Each such rule and regulation shall be consistent with and designed to further the purposes outlined in this Declaration.

SECTION 12

REAL ESTATE TAXES AND ASSESSMENTS

12.1 Real Estate Taxes. The Owner of a Lot shall be responsible for and shall pay all taxes and assessments, general and special, levied or imposed upon the Lot and its improvements.

12.2 Common Property. Taxes and assessments, general and special, charged against the Common Property which are owned in fee simple by the Association shall be deemed a Common Expense.

SECTION 13

INSURANCE

13.1 Fire, Extended Coverage and Standard "All Risks" Insurance. The Association shall insure all buildings and Structures which are located on the Common Property, and may maintain insurance for all other structures and improvements now or hereinafter constructed on the Common Property against any loss or damage by such hazards as are ordinarily insured by a comprehensive, extended coverage and "all-risks" policies issued in the amounts at all times sufficient to prevent the Association from becoming co-insurers under the terms of any

applicable coinsurance clause or provision and in no event less than the actual replacement cost of such improvements, as determined from time to time by the insurer.

Any such insurance shall be obtained from a fire and casualty insurance company authorized to write such insurance in the State of Georgia which has a general policy holder rating of no less than A, as determined by the then latest edition of the Best's Insurance Reports or its successor guide, and shall be written in the name of the Association for the use and benefit of the Lot Owners and their mortgagees as their interests may appear. The Board of Directors and/or its authorized representatives shall have the exclusive right to negotiate and adjust all loss claims. Unless the Board of Directors determines otherwise, all such insurance shall contain a waiver of subrogation of rights by the carrier as to the Association, its officers or directors, and all Lot Owners and Occupants.

13.2 Use of Fire Insurance Proceeds. Unless at least sixty-seven percent (67%) of the Owners (other than Declarant or Builder) of Lots have given their prior written approval, the Association shall not be entitled to use hazard insurance proceeds for losses to the Common Property for other than the repair, replacement or reconstruction of such Common Property.

13.3 Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all Common Property, and other areas for which the Association is responsible, and insuring the Association, the directors, and the Lot Owners and members of their respective families, tenants and occupants, in an amount of not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence for personal injury and/or property. This insurance shall include protection against liability for risks arising out of the maintenance of the Areas of Common Responsibility and such other risks as are customarily covered with respect to developments similar in construction, location and use, as determined by the Board. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim for a Lot Owner, Tenant or Occupant because of negligent acts of the Association, the Board, or other Lot Owners, Tenants, or Occupants.

13.4 Other Insurance. In addition, the Board may purchase and maintain contractual liability insurance, trustees' and officers' liability insurance, and such other insurance as the Board may deem desirable from time to time.

13.5 Insufficient Insurance. In the event the improvements forming a part of the Common Property or any other area for which the Association is responsible, or any portion thereof, shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, the Association shall advance such costs in excess of available insurance proceeds. The amount so advanced by the Association shall become a Special Assessment against all of the Lots, and such Assessments shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the non-payment of Assessments. The action required to be taken by the Association under this Section shall not require any vote of the Members of the Association.

13.6 Fidelity Bonds. The Board shall, if available at reasonable cost, obtain as a Common Expense to the Association fidelity bond coverage with respect to any person who either handles or is responsible for funds held or administered by the Association, in an amount no less than the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force; provided, however, the fidelity bond coverage must at least equal the sum of three months' Assessments on all Dwelling Units on the Property, plus the Association's reserve funds. A management agent handling funds for the Association shall also be covered by its own fidelity bond, naming the Association as an additional obligee, at the sole cost of said agent.

SECTION 14

DURATION, AMENDMENT AND TERMINATION

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

14.2 Amendment.

(a) By the Declarant. This Declaration may be amended unilaterally at any time and from time to time by Declarant if such amendment is: (i) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (iv) necessary to enable any governmental agency or private insurance company, including without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee mortgage loans on the Lots subject to this Declaration; provided, however, any amendments shall not adversely affect the title to any Lot unless the Owner of such Lot consents thereto in writing. Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, such amendment shall not materially adversely affect the right of any Owner hereunder to the use and enjoyment of such Owner's Lot.

(b) By the Board. The Board of Directors, with the written consent of the Declarant, and without a vote of the members may amend this Declaration: (i) to elect to be governed by and thereafter comply with the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220 *et seq.*; (ii) to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (iii) to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iv) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (v) to enable any governmental agency or private insurance company, including without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner of such Lot consents thereto in writing.

(c) By the Association. In addition to the above, this Declaration may be amended upon the affirmative vote or written consent or any combination of affirmative vote and written consent of Owners of at least two-thirds (2/3) of the Lots and the consent of Declarant. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein.

The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given. The amendments authorized by this Section may be of uniform or non-uniform application and Owners shall be deemed to have agreed that the Declaration may be amended as provided herein and that any rule of law requiring unanimous approval of amendments having a non-uniform application shall not apply.

SECTION 15

MISCELLANEOUS

15.1 No Reverter. No covenant, condition, restriction or reservation or easement contained in this Declaration is intended to create, or shall be construed as creating, a condition subsequent or a possibility of reverter.

15.2 Notices. Any notice required or permitted to be given to an Owner or Tenant by the Board pursuant to the provisions of this Declaration shall be deemed given when delivered personally or mailed by United States Registered or Certified Mail, return receipt requested,

postage paid, or delivered in person, including delivery by Federal Express or other reputable commercial courier service, addressed to his or her last address as it appears on the records of the Association. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Lot and to the Declarant and to the Association at the address of their respective registered agent on file with the Secretary of State of the State of Georgia. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Owners shall keep the Association advised of their current address and phone numbers where they can be reached. The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

15.3 Construction. The Board shall have the right to construe the provisions of this Declaration, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding as to all persons and entities benefited or bound by the provisions of this Declaration.

15.4 Invalidity. The determination by a court of competent jurisdiction that any provision of this Declaration is invalid for any reason shall not affect the validity of any other provision hereof.

15.5 Headings. The headings of the Sections are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

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

15.7 Conflict. If there are conflicts or inconsistencies between the provisions of the laws of the State of Georgia the Articles of Incorporation, this Declaration, the Bylaws, Architectural Guidelines and the Rules and Regulations, it shall be agreed that the provisions of the laws of the State of Georgia, this Declaration, the Articles of Incorporation, the Bylaws, the Architectural Guidelines and the Rules and Regulations (in that order) shall prevail.

15.8 Covenants Running with Land. This Declaration and all amendments hereto shall be, and shall be construed as, covenants running with the land, shall be binding upon Declarant, Builder, any mortgagee, the Association, its Members, each Owner, each Occupant and all claiming under each Owner or Occupant, and shall (regardless of whether or not any such beneficiary owns an interest in any Lot) inure to the benefit of and be enforceable by (i) Declarant, (ii) Builder, (iii) the Association, and (iv) each Owner and all claiming under each Owner.

15.9 Availability of Documents. The Association shall make available to Members, Owners, and lenders, and to holders, insurers, or guarantors of any first mortgage, current copies of the Declaration, rules and regulations, if any, and other rules concerning the Property.

"Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

15.10 Right of Entry. The Association shall have a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of the Property; provided, however, such right shall not include the right to enter a Dwelling Unit on a Lot without the consent of the Owner thereof.

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

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

15.13 Security. ALL OWNERS, OCCUPANTS, TENANTS, GUESTS, LICENSEES, AND INVITEES, AS APPLICABLE, ACKNOWLEDGE THAT DECLARANT, BUILDER, THE ASSOCIATION AND ITS BOARD OF DIRECTORS DO NOT REPRESENT OR WARRANT THAT ANY SAFETY OR SECURITY MEASURES WILL BE IMPLEMENTED IN THE COMMUNITY OR, IF IMPLEMENTED, THAT SUCH SAFETY OR SECURITY MEASURES MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR THAT ANY SUCH SAFETY OR SECURITY MEASURES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THEY ARE DESIGNED. EACH OWNER, OCCUPANT, TENANT GUEST, LICENSEE, OR INVITEE, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT DECLARANT, BUILDER, THE ASSOCIATION AND THE BOARD OF DIRECTORS ARE NOT INSURERS OR PROVIDERS OF SAFETY OR SECURITY AND SHALL HAVE NO DUTY TO PROVIDE ANY SAFETY OR SECURITY ON ANY PORTION OF THE COMMUNITY; AND THAT EACH OWNER, OCCUPANT, TENANT, GUEST, LICENSEE, AND INVITEE ASSUMES ALL RISKS OF PERSONAL INJURY AND PROPERTY DAMAGE AND FURTHER

ACKNOWLEDGES THAT DECLARANT, BUILDER, THE ASSOCIATION AND THE BOARD OF DIRECTORS HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST, LICENSEE, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SAFETY OR SECURITY MEASURES IMPLEMENTED OR APPROVED.

15.14 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the total eligible Association vote and the Declarant. This Section shall not apply to: (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of Assessments as provided herein; (c) proceedings involving challenges to *ad valorem* taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for goods or services to which the Association is a party. This Section shall not be amended unless such amendment is made unilaterally by the Declarant as provided herein or is approved by the percentage votes necessary to institute proceedings as provided above.

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

15.16 Condemnation. In the event any Lot or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the net proceeds of any award or settlement shall be the property of the Owner and the holder of the first mortgage, to the extent of their respective interests. Each Owner shall give the holder of a first mortgage on the Owner's Lot timely written notice of such proceeding or proposed acquisition.

In the event the Common Property or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or other sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the Owners and their mortgagees, as their interests appear.

IN WITNESS WHEREOF, Declarant has caused this Declaration of Covenants, Conditions, and Restrictions for Rivendale Crossing to be executed by its duly authorized officer under seal as of the day and year first above written.

DECLARANT:

**FISCHER DEVELOPMENT CO.
II, INC.,** a Kentucky corporation

By:
Print Name:
Title:

Todd E. Fischer
President

[AFFIX SEAL]

Signed, sealed and delivered
in the presence of:

M. L. [Signature]
WITNESS

Jaclyn Reno
NOTARY PUBLIC

My Commission Expires: 1/26/2016

[AFFIX NOTARY SEAL]

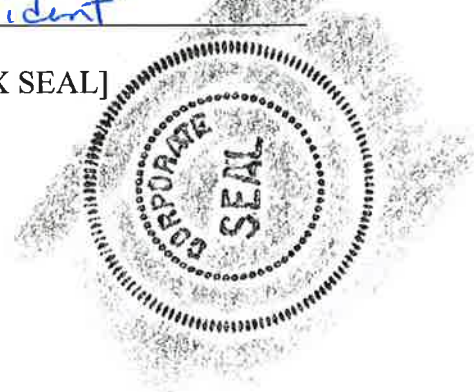
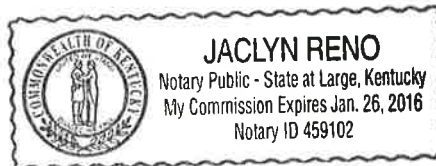


EXHIBIT "A"

Land Initially Submitted

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 304 OF THE 7TH DISTRICT OF GWINNETT COUNTY, GEORGIA. BEING THE PROPERTY TO BE KNOWN AS RIVENDALE CROSSING SUBDIVISION, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE LAND LOT CORNER COMMON TO LAND LOTS 304, 305, 323, AND 324, THENCE PROCEEDING South 30 degrees 37 minutes 21 seconds East for a distance of 299.48 feet TO A POINT, THENCE North 59 degrees 40 minutes 28 seconds East for a distance of 570.29 feet TO A POINT, THENCE North 60 degrees 18 minutes 06 seconds East for a distance of 51.99 feet TO A POINT, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE North 60 degrees 18 minutes 06 seconds East for a distance of 1067.87 feet TO A POINT,

THENCE South 29 degrees 36 minutes 13 seconds East for a distance of 922.41 feet TO A POINT,

THENCE South 60 degrees 02 minutes 17 seconds West for a distance of 270.53 feet TO A POINT,

THENCE South 87 degrees 57 minutes 19 seconds West for a distance of 779.55 feet TO A POINT,

THENCE South 32 degrees 00 minutes 02 seconds West for a distance of 446.88 feet TO A POINT,

THENCE along a curve to the left having a radius of 170.84 feet and an arc length of 22.89 feet, being subtended by a chord of North 10 degrees 16 minutes 37 seconds West for a distance of

22.87 feet TO A POINT,

THENCE along a curve to the left having a radius of 719.51 feet and an arc length of 105.55 feet, being subtended by a chord of North 18 degrees 19 minutes 03 seconds West for a distance of 105.45 feet TO A POINT,

THENCE North 22 degrees 31 minutes 12 seconds West for a distance of 138.80 feet TO A POINT,

THENCE South 70 degrees 11 minutes 53 seconds West for a distance of 7.01 feet TO A POINT,

THENCE North 17 degrees 05 minutes 02 seconds West for a distance of 46.80 feet TO A POINT,

THENCE along a curve to the right having a radius of 103.14 feet and an arc length of 62.28 feet, being subtended by a chord of North 00 degrees 55 minutes 16 seconds East for a distance of 61.34 feet TO A POINT,

THENCE North 18 degrees 13 minutes 12 seconds East for a distance of 85.21 feet TO A POINT,

THENCE along a curve to the left having a radius of 162.79 feet and an arc length of 73.66 feet, being subtended by a chord of North 05 degrees 15 minutes 28 seconds East for a distance of 73.03 feet TO A POINT,

THENCE along a curve to the left having a radius of 414.95 feet and an arc length of 76.23 feet, being subtended by a chord of North 12 degrees 57 minutes 58 seconds West for a distance of 76.12 feet TO A POINT,

THENCE North 18 degrees 48 minutes 37 seconds West for a distance of 60.04 feet TO A POINT,

THENCE along a curve to the right having a radius of 177.47

feet and an arc length of 43.21 feet, being subtended by a chord of North 11 degrees 50 minutes 04 seconds West for a distance of 43.10 feet TO A POINT,

THENCE North 04 degrees 51 minutes 36 seconds West for a distance of 133.93 feet TO A POINT, SAID POINT BEING THE TRUE POINT OF BEGINNING.

Together with and subject to covenants, easements, and restrictions of record.

Said property contains 21.33 acres.

EXHIBIT B

ADDITIONAL PROPERTY

ALL THAT TRACT OR PARCEL OF LAND, lying and being in Land Lots 304 and 305 of the 7th District, Gwinnett County, Georgia.

EXHIBIT "C"

BYLAWS

OF

RIVENDALE CROSSING HOMEOWNERS ASSOCIATION, INC.

Prepared By:
Rachel E. Conrad
DOROUGH & DOROUGH, LLC
Attorneys at Law
160 Clairemont Avenue
Suite 650
Decatur, Georgia 30030
(404) 687-9977

BYLAWS

OF

RIVENDALE CROSSING HOMEOWNERS ASSOCIATION, INC.

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BYLAWS
OF
RIVENDALE CROSSING HOMEOWNERS ASSOCIATION, INC.

Article 1
Name, Membership, Applicability and Definitions

1.1 Name. The name of the corporation shall be Rivendale Crossing Homeowners Association, Inc. (hereinafter sometimes referred to as the "Association").

1.2 Membership. The Association shall have two classes of Membership, as is more fully set forth in that certain Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Rivendale Crossing, as recorded in the Gwinnett County, Georgia land records (such Declaration, as amended, supplemented, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

1.3 Definitions. The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit, or the meanings given in the Georgia Nonprofit Corporation Code, O.C.G.A. Section 14-3-101, *et seq.* (the "Nonprofit Code"). Statutory references shall be construed as meaning the referenced statute or portion thereof as the same may exist from time to time.

Article 2
Association: Meetings, Quorum, Voting, Proxies

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

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

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

2.4 Record Date. The Board of Directors shall fix in advance a record date for a determination of Members entitled to notice of and to vote at any meeting of Members or any adjournment thereof, or to make a determination of Members for any other purpose, such date to be not more than seventy (70) days before the date on which the particular action requiring such determination of Members is to be taken.

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

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

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

2.8 Membership List. After the record date for any meeting is established by the Board of Directors, the Secretary shall prepare an alphabetical list of the names and addresses of all of the Members who are entitled to notice of the meeting. Beginning at least two (2) business days after notice is given of the meeting for which the list was prepared, the list of Members shall be available for inspection by any Member or a Member's agent or attorney: (1) on a reasonably

accessible electronic network, provided that the information required to gain access to such list is included with the notice of the meeting or upon request; or (2) during ordinary business hours at the Association's principal office or at such other reasonable place as may be specified in the notice in the city where the meeting will be held. In the event that the Association makes the list available on an electronic network, the Association may take reasonable steps to ensure that such information is available only to Members of the Association. In addition, the list shall be available for inspection at the meeting or any adjournment thereof.

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

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

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

2.12 Action Without A Formal Meeting. Any action required or permitted to be approved by the Members may be approved without a meeting if one (1) or more consents, in writing or by electronic transmission, setting forth the action so taken, shall be signed, either personally or by an electronic transmission, and dated by Members (including the Declarant, if the consent of the Declarant is required) holding the voting power required to pass such action at a meeting held on the record date for such action. The record date for such action shall be the date that the first Member signs a consent. Such action shall be approved when the Secretary receives a sufficient number of such consents dated within seventy (70) days of the record date for such action. If less than unanimous consent is obtained, the approval shall be effective ten (10) days after the Secretary gives written notice of the approval to all Members who did not sign a consent. Each consent in writing or by electronic transmission shall be included in the minutes of meetings of Members filed in the permanent records of the Association. No consent in writing or by electronic transmission shall be valid unless: (1) the consenting Member has been furnished the same material that, pursuant to the Nonprofit Code, would have been required

to be sent to Members in a notice of a meeting at which the proposed action would have been submitted to the Members for action; or (2) the written consent contains an express waiver of the right to receive the material otherwise required to be furnished.

2.13 Action By Written Ballot. Any action that may be taken at any annual, regular or special meeting of Members may be taken without a meeting if approved by ballot in writing or by electronic transmission as provided herein. The Association shall deliver a ballot in writing or by electronic transmission to each Member entitled to vote on the matter. The ballot in writing or by electronic transmission shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by ballot in writing or electronic transmission shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely ballot in writing or by electronic transmission received by the Association may not be revoked. Approval by ballot in writing or by electronic transmission of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The results of each action by ballot shall be certified by the Secretary and shall be included in the minutes of meetings of Members filed in the permanent records of the Association.

Article 3

Board of Directors: Number, Powers, Meetings

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

3.2 Directors Appointed by Declarant. The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (a) the expiration of ten (10) years after the date of the recording of the Declaration; (b) the date on which all of the Lots planned by Declarant to be a part of the Subdivision shall have been improved with a Dwelling Unit and conveyed to an Owner for occupancy as a residence; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association.

The directors appointed by the Declarant need not be Owners or residents in the Subdivision. The total number of Lots planned by Declarant for the Subdivision shall initially be the number of Lots shown on the Declarant's land use plan for the development, as it may be amended from time to time. Inclusion of property on the land use plan shall not obligate the

Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land use plan bar Declarant from subjecting such property to the Declaration. The final total number of Lots planned for the Subdivision shall be the actual number of Lots shown on the Recorded Plat(s) regardless of any different number of Lots shown from time to time on the land use plan.

3.3 Number of Directors. During the time in which the Declarant has the right to appoint and remove the officers and directors of the Association, the Board of Directors shall consist of one (1) to three (3) Members as determined by Declarant in writing from time to time. Thereafter, the Board shall consist of three (3) directors, who shall be elected as provided in Section 3.5 below.

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

3.5 Election and Term of Office. After the Development Period expires, the Association shall call a special meeting (or take action under Section 2.12 or Section 2.13 in lieu of a meeting) and the Class A Members shall elect three (3) directors as follows: the initial term of two (2) directors shall be fixed at two (2) years and the initial term of one (1) director shall be fixed at one (1) year. Thereafter, all successors shall be elected to a term of two (2) years. At annual meetings thereafter (or pursuant to Section 2.12 or Section 2.13 in lieu of a meeting), directors shall be elected as necessary to fill vacant seats on the Board. All eligible Class A Members of the Association shall vote on all directors to be elected, and the candidates receiving the most votes shall be elected. Notwithstanding anything herein to the contrary, the members of the Board of Directors shall continue in office until their respective successors have been elected and take office.

3.6 Removal of Directors. At any annual, regular or special meeting of the Association, any one (1) or more of the members of the Board of Directors elected by the Class A Members may be removed, with or without cause, by a majority of the total eligible Association vote and a successor may then and there be elected to fill the vacancy thus created. The notice of the meeting shall state that the purpose or one of the purposes, of the meeting is removal of a director. A director whose removal by the Class A Members has been proposed shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the remaining directors. This provision shall not apply to directors appointed by the Declarant.

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

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

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

3.10 Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two (2) directors. The notice shall specify the date, time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery (including commercial delivery service) to such director's home or office; (b) written notice by first class mail, postage prepaid; (c) by telephone communication (including facsimile), either directly to the director or to the director's home or office; or (d) issued electronically in accordance with the Nonprofit Code, if the director has consented in writing to such method of delivery and has provided the Board with an address regarding the same. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited with the U.S. Postal Service at least four (4) days before the time set for the meeting. Notices given by personal delivery, electronic transmission or telephone shall be given at least two (2) days before the day set for the meeting.

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

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

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

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

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

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

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

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

- (a) preparing and adopting an annual budget in which there shall be established the contribution of each Member to the Common Expenses;
- (b) making assessments to defray the Common Expenses and establishing the means and methods of collecting such Assessments;
- (c) providing for the operation, care, upkeep, and maintenance of the Areas of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (e) collecting the Assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;
- (f) making and amending rules and regulations;

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

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Association, which enforcement power shall include, without limitation, the power to levy fines as provided herein and in the Declaration in such amounts as from time to time the Board may deem proper in the circumstances, counting each day a violation continues after notice from the Board as a separate violation;

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

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

(k) authorizing contracts on behalf of the Association.

3.19 Borrowing. The Board of Directors shall have the power to borrow money without the approval of the Members of the Association; provided, however, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for a Special Assessment, in the event that the total amount of such borrowing exceeds or would exceed ten percent (10%) of the annual budget of the Association. Notwithstanding anything to the contrary herein, this Section 3.19 shall not apply to loans to the Association from Declarant, Builder or an Affiliated Entity as provided in Section 4.9 of the Declaration.

3.20 Fining Procedure. A fine shall not be imposed (a late charge or penalty shall not constitute a fine) unless and until the following procedure is followed:

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

(1) the nature of the Default, the fine to be imposed and the date, not less than ten (10) days or, in the event of an unapproved sign, twenty-four (24) hours, from the date of the notice, that the fine will take effect;

(2) that the violator may, within ten (10) days or, in the event of an unapproved sign, twenty four (24) hours, from the date of the notice, request a hearing in writing regarding the fine imposed;

(3) the name and address of a person to contact to challenge the fine;

(4) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and

(5) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days or, in the event of an unapproved sign, twenty-four (24) hours, of the date of the notice.

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

(c) Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the violation recurs, the Board may, upon notice stating the nature of the violation and delivered to the Member by first class or certified mail sent to the address of the Member shown on the Association's records, impose a fine.

Article 4 Officers

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors. This provision shall not apply to officers appointed by Declarant.

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

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

4.4 Salaries. The officers shall receive no compensation.

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

4.6 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and directors. The immediate supervision of the affairs of the Association shall be vested in the President. It shall be the President's duty to

attend to the business of the Association and maintain strict supervision over all of its affairs and interests. The President shall keep the Board of Directors fully advised about the affairs and conditions of the Association, and shall manage and operate the business of the Association pursuant to and in accordance with such policies as may be prescribed from time to time by the Board of Directors.

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

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

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

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

Article 5 Committees

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

the Board under the Articles of Incorporation of the Association, the Declaration, these Bylaws or the Nonprofit Code.

Article 6
Miscellaneous

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

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

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

6.4 Electronic Records, Signatures and Documents. To the extent permitted by Georgia law, the Declaration and these Bylaws, the Association and its Members, officers, directors, Owners and Occupants may perform any obligation or exercise any right by use of any technological means providing sufficient security, reliability, identification and verifiability, which technological means have been approved by the Board of Directors in its sole discretion.

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

6.6 Dissolution. The Association shall not be dissolved unless and until the terms and conditions in the Articles of Incorporation have been complied with; provided, however, no dissolution shall be effective unless also approved by the Gwinnett County Board of Commissioners.

EXHIBIT D

Loan Agreement(s) and Promissory Note(s) to fund Operating Deficit(s) pursuant to Section 4.9 of Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Rivendale Crossing shall conform with the following provisions which shall govern the terms and conditions of said Agreement(s) and Notes(s):

1. Type of Note:

The Note(s) may be issued in any of the following forms:

(a) Demand Note:

This type of Note shall be payable on the date of demand by Lender; or

(b) Open-end Note:

This type of Note shall permit additional borrowing and prepayment of principal, without penalty; or

(c) Closed-end Note:

This type of Note shall not permit additional borrowing against this note; but prepayment of principal, without penalty, shall be permitted.

2. Method of Payment:

Repayment of the loan(s) may be by any of the following methods:

(a) Installment Plan:

This method of payment shall require payments, of both principal and interest, at regular intervals over the term of the loan; or

(b) Lump Sum Payment:

This method of payment shall require Periodic payments, of both principal and interest, for a specified time and a lump sum payment at maturity to discharge the outstanding balance of the loan; or

(c) Balloon Payment:

This method of payment shall require periodic interest payments for a specified time and a lump sum payment at maturity to discharge the outstanding balance of the loan.

3. Interest:

The Interest Rate established by Lender shall be reasonable, but no greater than two (2) percentages points over the "prime rate" as published in the Wall Street Journal and shall be designated by lender to be either:

(a) Fixed:

The Lender shall establish a rate of interest at the time of the making of the Note and this rate of interest shall remain constant over the term of the Note; or

(b) Variable:

The Lender can periodically adjust the interest rate in accordance with fluctuations in the "prime rate" as published in the Wall Street Journal.

Furthermore, Interest shall be designated by Lender to be either:

(a) Compound:

Interest shall be paid on both the principal and the previously accumulated interest; or

(b) Simple:

Interest shall be paid on the principal only and not on accumulated interest.

4. Limit on Term:

The Note(s) may be issued for a term up to, but not to exceed, ten (10) years.

5. Waiver of Defenses:

Borrower shall waive presentment, demand, protest, and notice of demand, protest, non-payment and dishonor. Borrower shall also waive all defenses based on surety ship or impairment of collateral.

6. Agreement(s) and Note(s) shall contain clauses addressing the following issues:

- (a) Order of payment
- (b) Default
- (c) Expenses
- (d) Omission or waiver by Lender
- (e) Severability
- (f) Choice of law