

47717
00297

BK47717PG0297

FILED & RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA.

07 MAR 28 PM 1:58

TOM LAWLER, CLERK

0302651-52

Return to:
Seth G. Weissman, Esq.
Weissman, Nowack, Curry & Wilco, P.C.
One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, Georgia 30326

DECLARATION OF COVENANTS

FOR

ASHBURY PARK

WEISSMAN, NOWACK, CURRY, & WILCO, P.C.

Attorneys

One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, Georgia 30326
(404) 926-4500

COPYRIGHT © 2007. ALL RIGHTS RESERVED. THIS DECLARATION MAY BE USED
ONLY IN CONNECTION WITH THE PROPERTY AT ASHBURY PARK AND THE
OPERATION OF THE ASHBURY PARK HOMEOWNERS ASSOCIATION, INC.

0045848

130

STATE OF GEORGIA
COUNTY OF GWINNETT

DECLARATION OF COVENANTS

FOR
ASHBURY PARK

THIS DECLARATION, consisting of covenants, conditions, easements and restrictions, is made on the date set forth below by Vintags Communities, Inc., a Georgia corporation ("Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article II of this Declaration;

WHEREAS, Declarant desires to subject the real property described in Article II to the provisions of this Declaration and to provide for the subjecting of other real property to the provisions of this Declaration; and

NOW, THEREFORE, Declarant declares that, subject to the provisions of Section 2 of Article II of this Declaration, the real property described in Article II of this Declaration, including the improvements constructed or to be constructed thereon, is subjected to the provisions of this Declaration, and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Declaration, and shall be binding on all Persons having any right, title, or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors in title, and assigns and shall be for the benefit of all owners of the property subject to this Declaration.

THIS DECLARATION DOES NOT AND IS NOT INTENDED TO CREATE A CONDOMINIUM REGIME SUBJECT TO THE GEORGIA CONDOMINIUM ACT, O.C.G.A. § 44-3-70, *ET SEQ.*

THIS DECLARATION DOES NOT AND IS NOT INTENDED TO SUBMIT THE COMMUNITY TO THE TERMS OF THE GEORGIA PROPERTY OWNERS ASSOCIATION ACT, O.C.G.A. § 44-3-220, *ET SEQ.*

TABLE OF CONTENTS

	Page
ARTICLE I. DEFINITIONS	1
ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION	3
Section 1. Property Submitted.	3
Section 2. Withdrawal of Property.....	3
ARTICLE III. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.....	4
Section 1. Membership.....	4
Section 2. Voting.....	4
ARTICLE IV. ASSOCIATION RIGHTS AND RESTRICTIONS; VARIANCES.....	4
Section 1. Association Rights and Restrictions.....	4
Section 2. Variances.....	5
ARTICLE V. ASSESSMENTS.....	5
Section 1. Purpose of Assessment.....	5
Section 2. Creation of the Lien and Personal Obligation for Assessments.....	5
Section 3. Computation of Annual Assessment.....	6
Section 4. Special Assessments.....	6
Section 5. Specific Assessments.....	7
Section 6. Lien for Assessments.....	7
Section 7. Effect of Nonpayment of Assessments.....	7
Section 8. Date of Commencement of Assessments.....	8
Section 9. Initiation Fee.....	8
Section 10. Statement of Account.....	8
Section 11. Capital Reserve Budget and Contribution.....	8
Section 12. Budget Deficits During Declarant Control.....	9
ARTICLE VI. ARCHITECTURAL STANDARDS.....	9
Section 1. Architectural Review Committee.....	9
Section 2. Approval of Builders and Architects.....	10
Section 3. Guidelines and Procedures.....	10
Section 4. Disclaimer.....	11
Section 5. No Waiver.....	11
Section 6. Variances.....	11
Section 7. Enforcement.....	11
Section 8. Commencement of Construction.....	12
ARTICLE VII. USE RESTRICTIONS AND RULES.....	13
Section 1. General.....	13
Section 2. Residential Use.....	13
Section 3. Number of Occupants.....	13
Section 4. Restricted Access to the Community.....	14
Section 5. Leasing.....	14
Section 6. Occupants Bound.....	15
Section 7. Vehicles.....	15
Section 8. Animals and Pets.....	16
Section 9. Signs and Flags.....	16
Section 10. Antennas and Satellite Dishes.....	17
Section 11. Firearms and Fireworks.....	17

Section 12.	Rubbish, Trash, and Garbage.....	18
Section 13.	Clotheslines, Garbage Cans, Woodpiles, Etc.....	18
Section 14.	Fences and Party Walls.....	18
Section 15.	Garage Sales.....	18
Section 16.	Air Conditioning Units.....	19
Section 17.	Nuisance.....	19
Section 18.	Unightly or Unkept Conditions.....	19
Section 19.	Abandoned Personal Property.....	19
Section 20.	Trees and Shrubs.....	19
Section 22.	Drainage.....	20
Section 23.	Sight Distance at Intersections.....	20
Section 24.	Energy Conservation Equipment.....	20
Section 25.	Minimum Lot Size, Setbacks, and Dwelling Size.....	20
Section 26.	Subdivision of Lots.....	20
Section 27.	Outbuildings.....	20
Section 28.	Swimming Pools.....	20
Section 29.	Standard Mailboxes.....	21
Section 30.	Recreational Equipment.....	21
Section 31.	Window Treatments.....	21
Section 32.	Garages.....	21
Section 33.	Lighting.....	21
Section 34.	Use of Common Property Including Amenities.....	21
Section 35.	Erosion Control and Contamination.....	21
ARTICLE VIII. MAINTENANCE; CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION.....		22
Section 1.	Association's Responsibility.....	22
Section 2.	Owner's Responsibility.....	23
Section 3.	Conveyance of Common Property by Declarant to Association.....	23
Section 4.	Removal of Improvements on Common Property by Declarant.....	23
ARTICLE IX. INSURANCE AND CASUALTY LOSSES.....		23
Section 1.	Insurance on Property Maintained by the Association.....	23
Section 2.	Repair and Reconstruction.....	24
ARTICLE X. CONDEMNATION.....		25
ARTICLE XI. ANNEXATION OF ADDITIONAL PROPERTY.....		26
Section 1.	Annexation Without Approval.....	26
Section 2.	Annexation With Approval.....	26
Section 3.	Additional Covenants and Easements.....	26
Section 4.	Amendment.....	26
ARTICLE XII. MORTGAGE PROVISIONS.....		26
Section 1.	Notices of Action.....	27
Section 2.	No Priority.....	27
Section 3.	Notice to Association.....	27
Section 4.	Amendments by Board.....	27
Section 5.	VA/HUD Approval.....	27
Section 6.	Applicability of This Article.....	27
Section 7.	Failure of Mortgagee to Respond.....	27
ARTICLE XIII. EASEMENTS.....		28
Section 1.	Easements for Encroachment and Overhang.....	28
Section 2.	Easements for Use and Enjoyment.....	28
Section 3.	Easements for Utilities.....	29
Section 4.	Easement for Entry.....	29

Section 5. Easement for Maintenance.....29
Section 6. Public in General.....29
ARTICLE XIV. GENERAL PROVISIONS.....30
Section 1. Enforcement.....30
Section 2. Additional Enforcement Rights.....31
Section 3. Duration.....31
Section 4. Amendment.....31
Section 5. SECURITY.....32
Section 6. Dispute Resolution.....32
Section 7. Partition.....33
Section 8. Gender and Grammar.....33
Section 9. Severability.....33
Section 10. Captions.....33
Section 11. Perpetuities.....33
Section 12. Indemnification.....33
Section 13. Construction and Sale Period.....33
Section 14. Section Intentionally Deleted.....34
Section 15. Financial Review.....34
Section 16. Sale of Lots.....34
Section 17. Agreements.....35
Section 18. Implied Rights.....35
Section 19. Variances.....35
Section 20. Disclosures.....35
Section 21. Preparer.....36

TABLE OF EXHIBITS

PROPERTY SUBMITTED....."A"
ADDITIONAL PROPERTY....."B"
BYLAWS OF ASHBURY PARK HOMEOWNERS ASSOCIATION, INC....."C"

ARTICLE I.
DEFINITIONS

The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

(a) "Additional Property" shall mean that property described on Exhibit "B" attached hereto and incorporated herein which may be submitted to the Community as provided in this Declaration.

(b) "Approved Builder" shall mean any builder or developer that is designated by Declarant as an "Approved Builder." An Approved Builder shall continue to be an Approved Builder for so long as it owns at least one (1) Lot for the purpose of construction of a residence and resale of the Lot and residence.

(c) "Architectural Review Committee" or "ARC" shall mean the committee established to exercise the architectural review powers set forth in Article VI hereof.

(d) "Area of Common Responsibility" shall mean and refer to the Common Property, together with other areas, if any, which by the terms of this Declaration or by contract or agreement with any other Person or entity become the responsibility of the Association.

(e) "Articles" or "Articles of Incorporation" shall mean the Articles of Incorporation of Ashbury Park Homeowners Association, Inc., which has been filed with the Secretary of State of the State of Georgia.

(f) "Association" shall mean Ashbury Park Homeowners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

(g) "Board of Directors" or "Board" shall mean the appointed or elected body of the Association, as applicable, having its normal meaning under Georgia corporate law.

(h) "Bylaws" shall refer to the Bylaws of Ashbury Park Homeowners Association, Inc., attached to this Declaration as Exhibit "C" and made a part of this Declaration.

(i) "Common Expenses" shall mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Lots.

(j) "Common Property" shall mean any and all real and personal property and easements and other interests, together with the facilities and improvements located in the Community, now or in the future owned by the Association, including by way of example and not limitation, the following: swimming pool, cabana, tennis courts, tennis pavilion, playground, sidewalks and detention pond.

(k) "Community" shall mean and refer to that certain real property and any easements, conditions and other real property interests therein described in Exhibit "A," attached hereto, and such additions thereto as may be made by Declarant and/or the Association in accordance with the procedures outlined in Article XI of this Declaration.

BK47717PG0303

(l) "Community Instruments" shall mean this Declaration and all exhibits hereto, including the Bylaws, Articles of Incorporation, the plats and plans, and any design standards and rules and regulations of the Association, all as may be supplemented or amended from time to time.

(m) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. This determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(n) "Declarant" shall mean and refer to Vintage Communities, Inc., a Georgia corporation, and such of its successors-in-title who shall (i) acquire, from a predecessor "Declarant," and for the purpose of development or sale, all or any portion of the real property described in Exhibit "A" and/or Exhibit "B" hereto, and (ii) be designated as the "Declarant" in the deed of transfer by which such successors-in-title shall so acquire its interest in such real property, or by written assignment of Declarant rights in an instrument recorded in the Gwinnett County, Georgia records.

In all events, there shall only be one "Declarant" at any one time; in no event shall more than one (1) Person have the right to exercise the power and authority of the "Declarant" at any one time.

(o) "Declarant Control Period" shall mean the period of time during which the Declarant is entitled to appoint and remove the members of the Board of Directors as provided in Article III, Part A, Section 2 of the Bylaws.

(p) "Design Guidelines" shall mean the design guidelines and application and review procedures as more specifically addressed in Article VI, Section 3 hereof.

(q) "Domestic Partner" shall mean any adult who cohabits with an Owner and who has been designated as the Owner's Domestic Partner in a written statement, signed by the Owner and filed with the Association's Secretary. A Person shall no longer be a Domestic Partner upon the Secretary's receipt of a written termination notice, signed by either the Owner or the Domestic Partner.

(r) "Electronic Document" shall mean information created, transmitted, received or stored by electronic means and retrievable in human perceivable form including, without limitation, e-mail, web pages, electronic documents, and facsimile transmissions.

(s) "Electronic Signature" shall mean a signature created, transmitted, received or stored by electronic means and includes, but is not limited to, a Secure Electronic Signature.

(t) "Eligible Mortgage Holder" shall mean those holders of first Mortgages secured by Lots in the Community who have requested notice of certain items as set forth in this Declaration.

(u) "Lot" shall mean any plot of land in the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family residence site as shown on the Survey. The term shall include, by way of illustration, but not limitation, an attached or detached residence for a single-family as may be developed, used, and defined as herein provided or as provided in Supplementary Declarations covering all or any part of the Community.

(v) "Majority" shall mean those eligible votes by Owners, or other group as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

(w) "Mortgage" shall mean any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(x) "Mortgagee" shall mean the holder of a Mortgage.

(y) "Occupant" shall mean any Person occupying all or any portion of a Lot in the Community for any period of time, regardless of whether such Person is a tenant or the Owner of such Property.

(z) "Official Records" shall mean the official land records of the Clerk of the Superior Court of Gwinnett County, Georgia.

(aa) "Owner" shall mean and refer to the record owner, whether one (1) or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(bb) "Person" shall mean any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(cc) "Retaining Wall" shall mean the concrete modular block retaining wall systems, concrete walls, or Gabion basket wall systems installed in the Community as part of the overall soil conservation and erosion control plan.

(dd) "Secure Electronic Signature" shall mean an electronic or digital method executed or adopted by a Person with the intent to be bound by or to authenticate a record, which is unique to the Person using it, is capable of verification, is under the sole control of the Person using it, and is linked to data in such a manner that if the data is changed, the electronic signature is invalidated.

(ee) "Supplementary Declaration," shall mean an amendment or supplement to this Declaration, which subjects Additional Property to this Declaration or imposes additional restrictions and obligations on the Community, or a portion thereof.

(ff) "Survey" shall mean the recorded plats of survey for Ashbury Park Subdivision, as amended, that are recorded in the Gwinnett County, Georgia records.

(gg) "Total Association Vote" shall mean all of the votes attributable to members of the Association (including votes of Declarant), and the consent of Declarant so long as Declarant owns any Lots or has the right to subject Additional Property to this Declaration as provided in Article XI.

ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Submitted. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions set forth in this Declaration is the real property described in Exhibit "A," attached and made a part of this Declaration. By one (1) or more Supplementary Declarations, Declarant and the Association have the right, but not the obligation, to subject the Additional Property described in Exhibit "B" to this Declaration, as provided in Article XI.

Section 2. Withdrawal of Property. The Declarant reserves the right to amend this Declaration unilaterally at any time so long as it owns any Lot for development and/or sale, without prior

notice and without the consent of any Person, for the purpose of removing certain portions of the Community then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community.

**ARTICLE III.
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Every Person who is the record owner of a fee interest in any Lot, is subject to this Declaration shall automatically be a member in the Association. Membership shall not include Persons who hold a security interest only and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall go along with and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor more than one (1) office held for each Lot owned.

Section 2. Voting. Members shall be entitled to one (1) equal vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be cast as those Owners decide and instruct the Secretary prior to any meeting. If the Secretary is not instructed, the Lot's vote shall be suspended in the event more than one (1) Owner of a Lot attempts to cast it.

**ARTICLE IV.
ASSOCIATION RIGHTS AND RESTRICTIONS; VARIANCES**

Section 1. Association Rights and Restrictions. The Association, acting through its Board of Directors, shall have the right and authority, in addition to and not in limitation of all other rights it may have, to:

(a) make and to enforce reasonable rules and regulations governing the use of the Community, including the Lots and the Common Property;

(b) enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by imposing reasonable monetary fines, exercising self-help powers, and suspending use and voting privileges and services paid for as a Common Expense, as provided herein. These powers, however, shall not limit any other legal means of enforcing the use restrictions or Association rules and regulations by either the Association or, in an appropriate case, by an aggrieved Owner;

(c) grant and accept permits, leases, licenses, utility easements, and other easements necessary for the proper maintenance or operation of the Community under, through, or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Community;

(d) control, manage, operate and, in the Board's discretion, maintain, replace, alter or improve all portions of the Community for which the Association is assigned maintenance responsibility under this Declaration;

(e) to represent and act on behalf of the Owners in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;

(f) represent the Owners in dealing with governmental entities on matters related to the Common Property;

(g) permanently or temporarily close any portion of the Common Property (excluding: (i) any portion of the Common Property the use of which is reasonably necessary for access to or from a Lot or (ii) any portion of the Common Property over, on, upon or which the Declarant has an easement) with thirty (30) days prior notice to all Owners, except that, in emergency situations requiring a temporary closing, prior notice shall not be required so long as notice is given within three (3) days after the closing explaining the reason for the closing. Notwithstanding the above, the Owners may re-open the closed Common Property by a majority of the Total Association Vote, cast at a duly called special or annual meeting;

(h) enter into Lots for maintenance, emergency, security, or safety purposes, or otherwise to discharge its powers or responsibilities hereunder, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot. For purposes of this Paragraph, an emergency justifying immediate entry into a Lot shall include, but not be limited to the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a person or animal might be injured or sick and require immediate medical attention. No one exercising the rights granted in this subparagraph shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a Lot shall exist; and

(i) acquire, lease, hold, and dispose of tangible and intangible personal property and real property.

Section 2. Variances. Notwithstanding anything to the contrary contained in this Declaration, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

ARTICLE V. ASSESSMENTS

Section 1. Purpose of Assessment. The assessments provided for herein shall be used for the general purposes of promoting the common benefit and enjoyment of the Owners and Occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration,

including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest not to exceed the maximum rate permitted by law per annum on the principal amount due, and costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, shall also be the personal obligation of every Person who is an Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee 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 a grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or by deed in lieu of foreclosure.

The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association certifying the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Annual assessments shall be levied at a uniform rate per Lot and shall be paid in such manner and on such dates as are fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days written notice, of the annual assessment for delinquents. Unless otherwise provided by the Board, assessments shall be paid in annual installments.

Section 3. Computation of Annual Assessment. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Community during the coming year, which may include, if necessary, a capital contribution or reserve in accordance with a capital budget separately prepared.

The common assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total budgeted common expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The Board shall cause the proposed budget and assessments to be levied against each Lot for the following year to be delivered to the members at least thirty (30) days prior to the proposed effective date thereof. The budget and assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board of Directors fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 4. Special Assessments. In addition to the other assessments authorized herein, the Board may, at any time, levy a special assessment against all Owners to cover unbudgeted expenses or expenses in excess of those budgeted, notice of which shall be sent to all Owners. Any special assessment which would cause the total of special assessments levied in one (1) fiscal year to exceed fifty percent (50%) of the Annual Assessment per Lot, shall be presented to the membership for a vote by ballot or at a meeting and deemed approved unless disapproved by a Majority of the Total Association Vote. Notwithstanding the foregoing, until one hundred percent (100%) of the Community has been

developed and conveyed to Owners in the normal course of development and sale, any such special assessments must be approved by Declarant.

Section 5. Specific Assessments. The Board of Directors shall have the power to specifically assess specific Lots pursuant to this Section, in its discretion, as it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XIV, Section 1, costs and expenses of self-help pursuant to Article XIV, Section 2, and the costs of maintenance performed by the Association which the Owner is responsible for under Article VIII shall be specific assessments. The Board may also specifically assess Lots for the following Association expenses, except for expenses incurred for maintenance and repair of items that are the maintenance responsibility of the Association:

(a) expenses of the Association which benefit less than all of the Lots in the Community may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received.

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

Section 6. Lien for Assessments. All assessments levied against any Lot, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall be secured by a lien on the Lot in favor of the Association from the time the sums become due and payable. The Association shall have the right, but not the obligation to evidence the existence of the lien by filing a notice of lien in the Gwinnett County, Georgia, records. The lien shall be superior to all other liens and encumbrances on the Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the Gwinnett County, Georgia, records and all amounts advanced under the terms of and secured by the Mortgage.

All Persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded, other than as provided above, shall be deemed to consent that their liens or encumbrances shall be inferior to future liens for assessments, whether or not prior consent is specifically set forth in the instruments creating their liens or encumbrances.

Section 7. Effect of Nonpayment of Assessments. Remedies of the Association. Any assessments or installments of assessment which are not paid when due shall be delinquent. Any assessment or installment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine, which shall not exceed fifteen percent (15%) of the assessment payment. The Association shall cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. If the assessment is not paid when due, a lien shall attach and, in addition, the lien shall include the late charge, interest at a rate not to exceed the highest rate allowed under Georgia law, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. The existence of the lien may, but is not required to be, evidenced by the filing of a notice of lien in the Gwinnett County, Georgia, records. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in

this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Lot.

No Owner may waive or otherwise exempt himself or herself from liability for assessments, by abandoning the Lot or in any other manner. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and no reduction of any assessment shall be claimed or allowed by reason of (a) any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, (b) for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or (c) from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

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

Section 8. Date of Commencement of Assessments. Assessments shall commence as to a Lot on the first day of the month following the conveyance of the Lot to a Person other than (a) the Declarant, or (b) an Approved Builder except as provided below. Neither the Declarant nor an Approved Builder or developer who purchases a Lot for the purpose of construction of a residence and resale of the Lot and residence shall be responsible for the payment of any type of assessment; provided, however, assessments shall commence on Lot containing occupied residences that are owned by Declarant or an Approved Builder on the first day of the month following the occupancy of the residence located on the Lot. Assessments shall be due and payable in a manner and on the schedule that the Board of Directors provides. The first annual common assessment shall be adjusted according to the number of months then remaining in that fiscal year.

Section 9. Initiation Fee. The purchaser of each Lot at the closing of the sale or resale of a Lot shall pay to the Association an initiation fee in an amount as determined from time to time by the Board of Directors. The initiation fee shall not be deemed an advance payment of regular or special assessments. The Board shall have discretion to increase the initiation fee by resolution of the Board; provided, however, the initiation fee shall not be changed by the Board without Declarant's consent so long as Declarant owns any Lots or has the right to subject Additional Property to this Declaration as provided in Article XI. Notwithstanding anything to the contrary herein, no initiation fee shall be due from any Person who takes title through foreclosure (or deed in lieu of foreclosure) upon the lien of any first priority Mortgage covering the Lot and the lien of any secondary purchase money Mortgage covering the Lot. The initiation fee shall be an assessment, which is the personal obligation of the Owner, and shall constitute a lien, which may be collected as provided in this Article.

Section 10. Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Lot. The Association shall respond in writing within ten (10) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein.

Section 11. Capital Reserve Budget and Contribution. After the expiration of the Declarant Control Period, the Board of Directors shall annually prepare a capital reserve budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the

expected repair or replacement cost. The Board shall set the required capital reserve contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital reserve budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The annual capital reserve contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in Section 3 of this Article. A copy of the capital reserve budget shall be distributed to each member in the same manner as the operating budget.

Notwithstanding any other provisions of this Declaration, during the Declarant Control Period, neither Declarant nor the directors and officers of the Association shall be required to prepare a capital reserve budget, set any other capital reserve contribution, or otherwise collect amounts for capital reserves.

Section 12. Budget Deficits During Declarant Control. During the Declarant Control Period, Declarant may, but shall have no obligation to, (a) advance funds to the Association in the form of a loan or gift sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances, if in the form of a loan, shall be evidenced by a promissory note or notes from the Association in favor of the Declarant and shall not be deemed a conflict of interest by the directors and officers appointed by Declarant, or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. The Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

ARTICLE VI. ARCHITECTURAL STANDARDS

Section 1. Architectural Review Committee. No exterior construction, addition, erection, or alteration shall be made upon any part of the Community unless and until the Architectural Review Committee has approved the following: (a) the builder; (b) the architect; and (c) plans and specifications showing at least the nature, kind, shape, height, materials, and location of the proposed construction, addition, erection, or alteration. For purposes of this section, a change in the paint color of a home or other exterior redecorating shall be considered an exterior alteration. However, no approval shall be required for any construction, alteration or addition made by Declarant. Until one hundred percent (100%) of the Community has been developed and conveyed to purchasers other than Declarant in the normal course of development and sale, Declarant shall have the right to appoint all members of the Architectural Review Committee. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. After Declarant's right to appoint has expired, the Board of Directors shall appoint the members of the Architectural Review Committee, or may adopt a resolution making the Board of Directors the Architectural Review Committee. The Board may employ for the ARC architects, engineers, or other Persons necessary to enable the ARC to perform its review. The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more (duly licensed architects or other qualified Persons, who shall have full authority to act on behalf of the ARC for all matters delegated. The Architectural Review Committee may, in its discretion, from time to time establish, abolish or amend standards to govern the development of Lots and the design and construction of improvements. The text of such standards and amendments shall be available to each Owner. Such standards shall be binding upon all Owners. A review fee in a reasonable amount may be charged.

The primary purpose of these architectural controls is to protect and preserve property values in the Community by maintaining architectural and aesthetic harmony and compatibility among the Lots and the structures on the Lots in the Community. The architectural controls and standards may be designed and applied to reflect that Lots within the Community are of varying sizes, topographies and locations, and that improvements and modifications suitable for one Lot may be inappropriate for another Lot. Therefore, the Architectural Review Committee is authorized to apply or adopt different standards for different Lots to reflect the varying sizes and layouts of Lots within the Community. Specifically, the ARC may, for example, allow an improvement, modification or change which cannot be seen from any street or other Lot within the Community at any time during the year, including winter, but prohibit the same change if it can be seen from any street or other Lot within the Community.

Section 2. Approval of Builders and Architects. Any builder or architect must be approved by the Architectural Review Committee as to financial stability, history of compliance, if applicable, with the Declaration in performing other work in the Community, experience, ability to build or design houses or other structures of the class and type approved by the Architectural Review Committee for such Lot, and such other factors as may be determined by the Architectural Review Committee to be reflective of quality or ability. Financial data, as deemed necessary by the Architectural Review Committee, must be submitted to the Architectural Review Committee. Each builder and architect performing any work within the Community shall be responsible for its actions and the actions of its agents, subcontractors and employees within the Community. Each such builder or architect shall ensure full compliance by its agents, subcontractors and employees, with the Declaration and Bylaws and all rules, regulations, or guidelines of the Association. Neither Declarant, the Association, the Architectural Review Committee, or any member of any of the foregoing shall be held liable for any injury, damage, or loss arising out of the performance or nonperformance of any approved architect or builder.

Section 3. Guidelines and Procedures. Declarant may prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") that shall be applicable to all construction activities within the Community. The Design Guidelines may contain general provisions applicable to all of the Community, as well as specific provisions which vary from one portion of the Community to another depending upon the location, unique characteristics, and intended use.

The Architectural Review Committee shall have sole and full authority to adopt and amend the Design Guidelines from time to time, without the consent of the Owners. The Architectural Review Committee shall make the Design Guidelines, if any, available to Owners and Approved Builders, and all such Persons shall conduct their activities in strict accordance with such Design Guidelines. In the discretion of Declarant, such Design Guidelines may be recorded in the Gwinnett County, Georgia records, in which event the recorded version, as it may unilaterally be amended from time to time by the Architectural Review Committee by recordation of amendments thereto, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

Any amendments to the Design Guidelines adopted from time to time by the Architectural Review Committee in accordance with this Section shall apply to construction and modifications approved after the date of such amendment only, and shall not apply to plans or specifications previously approved or require modifications to or removal of structures previously approved by the Architectural Review Committee.

In the event that the Architectural Review Committee fails to approve or to disapprove any application within forty-five (45) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However no approval, whether expressly granted or

deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the Architectural Review Committee pursuant to Section 6 of this Article.

The Architectural Review Committee shall be the only judge of the plans with regard to the requirements of this Article and may withhold approval for any reason, including purely aesthetic considerations. The Architectural Review Committee shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. If an Owner does not comply with this Section, the Board may record in the appropriate land records a notice of violation naming the violating Owner in addition to any other available remedies.

Section 4. Disclaimer. The Architectural Review Committee and the Board of Directors do not warrant or represent, that their decisions under this Article constitute, and their decisions shall not be interpreted as constituting, an approval as to compliance with any building code, regulation or ordinance, or any other code, regulation, ordinance or law, nor that their decisions under this Article reflect upon the structural integrity of any proposed alteration or improvement. Neither the Association, the Board, Declarant, the ARC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design or quality of approved construction on or modifications to any Lot.

Section 5. No Waiver. No Waiver. The approval of the Architectural Review Committee of any proposals, plans and specifications, or drawings, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or other matters later submitted for approval or consent.

Section 6. Variances.

(a) The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Variances may only be granted, however, when unique circumstances dictate and no variance shall: (i) be effective unless in writing; (ii) be contrary to the restrictions set forth in the body of this Declaration; or (iii) prevent the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

(b) The architectural standards and their enforcement may vary from time to time. These variances shall not constitute a waiver by the ARC or the Board of the right to adopt and enforce architectural standards under this Article. No decision by the ARC or Board shall constitute a binding precedent with respect to subsequent decisions of the ARC or Board. However, nothing in this Article shall permit the ARC or the Board to enforce retroactively its architectural standards against a Lot Owner whose architectural change has been approved under the architectural standards of a previous ARC or Board.

Section 7. Enforcement. Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Architectural Review Committee, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the Lot to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required

hereunder, the Board or its designees shall have the right to enter the Lot, remove the violation and restore the Lot to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the benefited Lot and collected as an assessment pursuant to this Declaration.

Any Approved Builder, contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Community, subject to the notice and hearing procedures contained in the Bylaws. In such event, the Declarant, the Community Association, the ARC, the Board of Directors, or the Officers, directors, members, employees, and agents of any of them shall not be held liable to any Person for exercising the rights granted by this Section.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Article and its decisions. Furthermore, the Board shall have the authority to record in the Gwinnet County land records notices of violation of the provisions of this Article.

If any Owner, Occupant or Approved Builder makes any exterior change, alteration, or construction (including landscaping) upon the Common Property in violation of this Article, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction be removed or that it remain on the Common Property without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction.

Section 8. Commencement of Construction. No changes, modifications, and improvements approved by the Architectural Review Committee hereunder shall be commenced until the Owner conspicuously posts an approval permit and such permit shall remain conspicuously posted until all construction activities are completed. All changes, modifications and improvements approved by the Architectural Review Committee hereunder must be commenced within six (6) months from the date of approval. If not commenced within six (6) months from the date of such approval, then such approval shall be deemed revoked by the Architectural Review Committee, unless the Architectural Review Committee gives a written extension for commencing the work.

Any new construction of a dwelling and related improvements on a Lot shall be completed in its entirety and, with respect to a dwelling, a certificate of occupancy shall be issued by the appropriate governmental agency, on or before one (1) year from the date of commencement of construction. "Commencement of construction" shall be deemed to be the pouring of foundation footings.

All other construction all work approved by the Architectural Review Committee hereunder shall be completed in its entirety within ninety (90) days from the date of commencement, unless otherwise agreed in writing by the Architectural Review Committee. All approved changes, modifications, and improvements must be completed in their entirety. An Owner may not construct only a portion or part of an approved change, modification, or improvement.

The Board may impose a fine for every day that any construction work approved by the ARC and commenced is not completed in accordance with the provisions of this Section; the fine shall be in the amount of \$100.00 per day, or such other higher amount as determined from time to time by resolution of the Board.

**ARTICLE VII.
USE RESTRICTIONS AND RULES**

Section 1. General. This Article, beginning at Section 2, sets out certain use restrictions that must be complied with by all Owners and Occupants of Lots. These use restrictions may only be amended in the manner provided in Article XIV, Section 4, regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, adopt, modify, or delete rules and regulations applicable to the Community. These rules shall be distributed to all Owners prior to the date that they are to become effective and after distribution shall be binding upon all Owners and Occupants of Lots until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the Total Association Vote and the consent of Declarant (so long as the Declarant has an option unilaterally to subject Additional Property to this Declaration as provided in Article XI). Notwithstanding the above, so long as Declarant owns any Lots or has the right to subject Additional Property to this Declaration as provided in Article XI, no rules and regulations which affect the Declarant, may be adopted, modified, or deleted without the written consent of the affected Declarant or Approved Builder.

Section 2. Residential Use. Except as otherwise expressly permitted in this Declaration, each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Community, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing in a Lot may conduct such ancillary business activities within the residence so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the residence; (b) the business activity does not involve Persons coming onto the Community who do not reside in the Community or door to door solicitation of residents of the Community (other than deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services); (c) the business activity conforms to all zoning requirements for the Community; (d) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (e) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board of Directors; and (f) the business activity does not result in a materially greater use of the Common Property facilities or Association services.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full or part time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity. Notwithstanding the above, the use of a Lot by an on site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this Section.

Section 3. Number of Occupants. The maximum number of occupants in a dwelling within the Community shall be limited to two (2) people per bedroom. "Occupancy," for purposes hereof, shall be defined as staying overnight in a dwelling within the Community for a total of more than thirty (30) days, either consecutive or non-consecutive, in any calendar year. This occupancy restriction shall not apply to require the removal of any person lawfully occupying a dwelling on a Lot on the Effective Date hereof. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Acts or any amendments thereto.

If an Owner of a Lot is a corporation, partnership, trust, or other legal entity not being a natural person, the entity shall give prior notice to the Board of any guests of the entity who will be utilizing the entity's dwelling by designating in writing to the Board the name(s) of the person(s) who will utilize the dwelling. The designated person(s) to occupy the dwelling may not be changed more frequently than once every six (6) months.

Section 4. Restricted Access to the Community. All Owners understand and acknowledge that access to the Community shall be restricted to Owners and Occupants and their designated guests, invitees, and licensees. Rules and regulations relating to the type of identification needed to gain access to or use facilities in the Community, how Owners and Occupants can designate guests, invitees, and licensees who shall be granted access to the Community, vehicular registration, and other issues relating to access may be adopted by the Board of Directors.

Section 5. Leasing. Lots may be leased for residential purposes only. "Leasing" for the purposes of this Section, is defined as regular, exclusive occupancy of a Lot by any Person other than the Owner; provided, however, "leasing" shall not include exclusive occupancy by the child, parent, or grandparent of an Owner. Occupancy by a roommate of an Owner shall not constitute "leasing." Leasing which is authorized hereunder shall be governed by the following provisions:

(c) General. Lots may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other Occupants of the Lot. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

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

(i) Compliance with Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure such compliance. The Owner shall cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any such violation. If the lessee, or another Person occupying the Lot, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot.

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

(ii) Use of Area of Common Responsibility. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Area of Common Responsibility, including, but not limited to, the use of any and all recreational facilities and other amenities.

(iii) Liability for Assessments. When a Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than sixty (60) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

Section 6. Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or design guidelines adopted pursuant to the Declaration which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants of Lots and guests and invitees of Occupants or Owners. The Owner shall be responsible for insuring that the Occupant, and the guests, invitees and licensees of the Owner or the Occupant strictly comply with all provisions of the Declaration, Bylaws, and any rules and regulations adopted by the Board of Directors. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

Section 7. Vehicles. The term "vehicles," as used in this provision, shall include without limitation, motor homes, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, trucks, campers, buses, vans, golf carts and automobiles. All vehicles shall be parked within garages, on driveways, or on other paved parking areas in the Community designated by the Board as parking areas for vehicles. Parking in yards is prohibited. Overnight on-street parking is prohibited. The doors of garages shall be kept closed at all times, except during times of entry and exit from the garage, or when someone is working in or around the garage.

No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition

so that it cannot operate on public streets. After the five (5) day period, the unlicensed or inoperable vehicle shall be considered a nuisance and may be removed from the Community. No boat, boat trailer, truck with mounted camper, other campers, towed vehicle, commercial vehicle, or vehicle with commercial writing on its exterior shall be kept or stored on any portion of the Community including in a garage or on a driveway, except in a screened area approved by the Board. In no event shall any recreational vehicle, mobile home or motor home be parked or stored upon any portion of the Community without approval by the Board. The Board may approve this temporary parking only for a reasonable period of time, based upon circumstances. Vehicles parked in violation of this provision shall be considered a nuisance and may be removed from the Community. No eighteen-wheel trucks or the cabs of these trucks or trucks with a load capacity in excess of one (1) ton shall be parked, kept, or stored within the Community, and if so parked, kept, or stored shall be considered a nuisance and may be removed from the Community. However, moving vans or service or delivery vehicles may be parked temporarily in the Community for such period of time as is reasonably necessary to provide each service, but no such vehicle shall remain parked on the Common Property overnight without prior written Board consent.

Motorized vehicles shall not be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

Section 8. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any portion of the Community, with the exception of dogs, cats or other generally recognized household pets, in a reasonable number as determined in the sole discretion of the Board of Directors. Pets shall not be allowed to roam free within the Community. Pets may not be left unattended outdoors, nor kept outdoors; pets must be within the presence of the Owner and under the physical control of the Owner at all times regardless of whether the Lot has an electronic fence permitted in accordance with Section 11 below. Those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or Occupants or to the owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Except as provided above, dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors. Feces left upon the Common Property by dogs must be removed by the owner of the dog or the person responsible for the dog. All Owners and Occupants keeping pets within the Community shall comply with all applicable governmental ordinances and regulations. Without prejudice to the Board's right to remove any such household pets, the Board may prohibit a household pet that has caused damage or injury from being walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall be registered, licensed, and inoculated as required by law.

Section 9. Signs and Flags. Except as may be provided for herein or as may be required by legal proceedings, and except for signs which may be erected by Declarant related to the development and sale of Lots, no signs, advertising posters, flyers, political placards or billboards of any kind shall be erected or placed by an Owner, Occupant or other Person, or permitted to remain on the Community without the prior written consent of the Board or its designee, except that:

(a) one (1) professional security sign not to exceed four inches (4") by four inches (4") in size may be displayed from within a residence on a Lot;

(b) and one (1) professionally lettered "For Sale" sign not to exceed two feet (2') by two feet (2') in size may be displayed in the front yard of a Lot; provided, further that if, at the time of any desired use of such "For Sale" sign, the Association is making "For Sale" signs available for the use of Owners, the signs made available by the Association must be used;

(c) 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.

Except as specifically provided in this paragraph, no sign shall be displayed on or from within any structure on a Lot. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. The Board shall also have the authority to adopt regulations permitting and specifying the size and placement of any temporary signs on Lots announcing birthdays or other events for limited periods of time. No advertising, directional, or vendor signs shall be permitted within the Community except as authorized by the Declarant under Article XIV, Section 13 of this Declaration.

Except as specifically provided in this paragraph, no flag, other than the flag of the United States, shall be displayed or flown on any flagpole or in any other manner on the Lot without the prior written consent of the Board or its designee; any flag that is authorized shall be of a reasonable size as determined by the ARC, which may also specify the manner of display and the height of any flagpole upon which the flag is displayed. All such flags shall be in good condition. All flags of the United States must be flown in compliance with the Federal Flag Act.

The Board may impose a fine of One hundred fifty dollars (\$150.00), or such other amount as may from time to time be set by resolution of the Board, for display of any sign or flag in violation of this provision which is not removed within twenty-four hours after written demand is delivered to the Owner in violation of this provision.

Section 10. Antennas and Satellite Dishes. Except as provided below, no satellite dish, antenna, or other device for the transmission or reception of television signals, radio signals, or any form of electromagnetic wave or radiation shall be erected, used, or maintained on any portion of the Community; provided, however, that the Association shall have the right to erect, construct, and maintain such devices. The following shall apply to all Owners:

(a) No transmission antenna of any kind may be erected anywhere on the Community without written approval of the Board of Directors or the ARC, as applicable.

(b) No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one meter in diameter shall be placed, allowed, or maintained upon the Community.

(c) DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may be installed only in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, both as may be amended from time to time.

In the event of a transfer of a Lot that includes the satellite dish or antenna, the Grantee shall assume all responsibility for the satellite dish or antenna and shall comply with this Declaration, the Bylaws, and the rules and regulations regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dish or antenna.

Section 11. Firearms and Fireworks. The use, display, or discharge of firearms or fireworks on any portion of the Community is prohibited except with prior approval of the Association; provided, however, that the display of lawful firearms in the Community is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Property to or from the Owner's Lot and provided further, that the Association may provide, either directly or through contract with a third party, a fireworks display within the Community, to commemorate the Fourth of July. The term "firearms" includes "B B" guns, pellet guns, and other

firearms of all types, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A. § 25 10 1, as amended.

Section 12. Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from a Lot and shall not be allowed to accumulate therein. The Board shall have the authority to select and enter into a contractual relationship for refuse collection with one company of its choosing to handle same for the entire Community. Garbage receptacles for individual Lots shall be screened or concealed from view of neighboring Lots and the street on which the Lot fronts except on the day of garbage pick-up in which event the garbage containers may be left at the curb for a period not to exceed sixteen (16) consecutive hours. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except in sealed bags placed in trash cans or proper receptacles designated by the Board for collection, if any. The above provisions in this Section are not applicable to construction debris, rubbish, trash, and garbage; provided, however, all such construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to unreasonably accumulate.

Section 13. Clotheslines, Garbage Cans, Woodpiles, Etc. All clotheslines, garbage cans, woodpiles, and related equipment and other similar items shall be located or screened so as to be concealed from view from any street or road. All construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate.

Section 14. Fences and Party Walls. No fence, fencing type barrier of any kind including fencing enclosures for pets shall be placed, erected, allowed, or maintained upon any portion of the Community without the prior written consent of the ARC, as applicable, with the exception that underground electronic fencing shall be allowed. Any fence allowed by the ARC shall be attached to the rear corners of the dwelling constructed on the Lot unless the prior written approval of the ARC has been obtained upon a showing of good cause; the ARC shall have sole discretion to determine what is "good cause" for such exceptions.

Each wall or fence built (on or within two feet of a property line between Lots) which shall serve and separate any two (2) adjoining Lots, other than any security fence erected at or near the top of a Retaining Wall separating two Lots, shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall or fence may restore it, and the other Owner who is benefited by the wall or fence shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions. In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

Section 15. Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited, unless the Owner obtains prior approval from the Board.

Section 16. Air Conditioning Units. No window air conditioning units may be installed on any Lot. Condensing units for air conditioners shall only be located in the rear or along the side of a dwelling.

Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property within the Community. Exterior sculptures, benches, fountains, flags, and similar items may not be placed in the front yard of a Lot or on the front exterior of a dwelling without the prior written approval of the ARC.

Section 17. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on and in his or her Lot. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause a 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 discharge 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 Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier, speaker or other sound device, except for devices as may be used exclusively for security purposes, shall be located, installed, or maintained upon the exterior of any Lot unless required by law. However, any siren or device for security purposes shall contain a device that causes it to automatically shut off within fifteen (15) minutes.

Section 18. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities which might tend to cause disorderly, unsightly, or unkempt conditions, including without limitation, the assembly and disassembly of motor vehicles, boats and other mechanical devices, shall not be pursued or undertaken in any part of the Community except within closed garages.

Section 19. Abandoned Personal Property. Personal property, except for personal property owned by the Association, is strictly prohibited from being stored, kept, or allowed to remain for a period of more than twenty four (24) hours upon any portion of the Common Property, Area of Common Responsibility, or on the rights-of-way located within the Community. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Property, Area of Common Responsibility, or on the rights-of-way located within the Community in violation of this Section, then the Board may remove and either discard or store the personal property in a location which the Board may determine. If personal property is removed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

Section 20. Trees and Shrubs.

(a) **Tree Removal.** No trees, whether located on a Lot or the Area of Common Responsibility, having a diameter of five (5) inches or more (measured from a point two (2) feet above ground level) and a height of more than eight (8) feet above the ground shall be removed without the prior written consent of the ARC, except for (a) diseased or dead trees; (b) trees needing to be removed to promote the growth of other trees or for safety reasons; (c) trees within ten (10) feet of the residence,

driveway, Retaining Wall, or walkways constructed or to be constructed on a Lot. Notwithstanding anything to the contrary stated herein, in the event a diseased or dead tree located on the Common Property that was originally planted by Declarant is removed by the Association, the Association shall replace such removed tree with one of the same species and similar size.

(b) **Planting of Trees and Shrubs.** No tree or shrub shall be planted within five feet (5') of any security fence erected at or near the top of a Retaining Wall, and the Association shall have the right to enter any Lot to remove any tree or shrub planted within the prohibited area.

Section 22. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 23. Sight Distance at Intersections. All property located at street intersections and at the intersections of streets and driveways shall be landscaped so as to permit safe sight across the corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 24. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, and are approved in writing by the ARC.

Section 25. Minimum Lot Size, Setbacks, and Dwelling Size. The size of the Lots and the minimum setback requirements for improvements on the Lots shall be determined solely by the recorded subdivision plat and by the Design Guidelines set forth by the ARC, if any. All single story dwellings shall contain a minimum of 2,000 square feet of heated and/or cooled space. All two story dwellings shall contain a minimum of 2,200 square feet of heated and/or cooled space. In the event there is any conflict between the recorded subdivision plat and the Design Guidelines, the more restrictive provision shall control.

Section 26. Subdivision of Lots. No Lot shall be subdivided or its boundary lines changed; provide, however, Declarant expressly reserves the right to combine and/or replat any Lot boundaries owned by Declarant. Any such division, boundary line change, or replatting by the Declarant shall not be in violation of the applicable subdivision and/or zoning regulations.

Section 27. Outbuildings. No structure of a temporary character, trailer, tent, shack, carport, storage structure, garage, barn, or other outbuilding shall be erected by any Owner or Occupant on any portion of the Community, other than by Declarant, so long as the Declarant has an option unilaterally to subject Additional Property to this Declaration as provided in Article XI, at any time, either temporarily or permanently, without the written approval of the Board.

Section 28. Swimming Pools. No above-ground swimming pool shall be erected, constructed, or installed on any Lot. No in-ground swimming pool or spa shall be erected, constructed or installed on any Lot unless its design, location and placement are approved by the ARC.

Section 29. Standard Mailboxes. All residences in the Community shall have standard mailboxes and mailbox posts conforming to postal regulations and mailbox guidelines adopted by the ARC. Any changes to mailboxes or mailbox posts must receive the prior written approval of the ARC.

Section 30. Recreational Equipment. No recreational or playground equipment including, but not limited to, swing sets, jungle gyms, play houses, tennis courts, and basketball goals, shall be erected, constructed, or installed on any Lot unless its location, design, and type are approved by the ARC. Portable basketball goals may only be kept on a Lot if they are stored in the interior of a building structure or in a location on the Lot not visible to other Owners when not in use. Basketball hoops, backboards, and poles shall not be permanently erected, constructed, or installed without the prior written approval of the ARC. All approved backboards shall be transparent and acrylic or such other color as approved by the ARC and kept in a neat and clean condition (nets may not be torn or missing). In addition, the Board may, in its sole discretion, permit the installation of such recreational equipment on the Common Property. Any playground or other play areas or equipment located on the Common Property shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to the use thereof.

Section 31. Window Treatments. All window treatments visible from the exterior of the front of such dwelling shall be white, off-white or another color approved in writing by the ARC. In no event should bed sheets, paper or foil be used as window treatments.

Section 32. Garages. It is prohibited for an Owner or Occupant of a dwelling that includes a garage to convert such garage to any other use. No Owner or Occupant of a Unit that includes a garage shall park his or her car or other motor vehicle on any portion of the Community, other than in the garage, unless the maximum number of cars or similarly sized motor vehicles which can be parked in the garage according to its design capacity are already parked in said garage. Garage doors shall remain closed at all times, except for necessary use, ingress, and egress.

Section 33. Lighting. Except as may be permitted by the ARC, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) street lights in conformity with an established street lighting program for the Community; or (c) seasonal decorative lights between Thanksgiving Day and January 15th of the following year.

Section 34. Use of Common Property Including Amenities. There shall be no obstruction of the Common Property, nor shall anything be kept on, parked on, stored on, or removed from any part of the Common Property without the prior written consent of the Board, except as specifically provided herein. There shall be no gardening or landscaping on the Common Property by Owners or Occupants without the prior written consent of the Board. This Section shall not apply to the Declarant so long as the Declarant has an option unilaterally to subject Additional Property to this Declaration as provided in Article XI. The Association shall have the right to host, stage or otherwise allow community events on the Common Property. The Association shall also have the right but not the obligation to locate trees, benches and/or other outdoor furniture on the Common Property to commemorate or honor group(s) or individual(s) and to place a plaque on such furniture or trees so commemorating or honoring such group(s) or individual(s).

Section 35. Erosion Control and Contamination.

(a) **Erosion Control.** Some Lots within the Community have Retaining Walls and security fencing at the back of the Lot that may be ten feet (10') or higher, which are an integral part of the overall soil conservation and erosion control plan for the Community. No Owner shall alter or remove any portion of the Retaining Wall or security fence without the prior written approval of the ARC, or its

designee, as applicable, of plans and specifications for the prevention and control of such erosion or siltation.

No activity which may create erosion or siltation problems in the Community shall be undertaken on any Lot without the prior written approval of the ARC, or its designee, as applicable, of plans and specifications for the prevention and control of such erosion or siltation.

Such plans and specifications shall be designed by a professional engineer licensed in the State of Georgia and all costs and expenses related thereto shall be borne exclusively by the Owner of such Lot. The ARC or its designee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include, by way of example and not of limitation, physical devices for controlling the run off and drainage of water, special precautions in grading, clean up activities and requiring landscaping as provided for herein.

(b) Contamination of Water Courses or Lots. No activity which results in contamination of or any damage to any stream, water course or any other Lot shall be conducted on any Lot, and each Owner shall be liable for all resulting damages from such activity and for restoration of a property damaged from contamination resulting from or attributable to such activity. In addition, prior to commencing any improvements on a Lot, the Owner of such Lot and any builders, subcontractors, or other agents of such Owner, shall fulfill their obligations to comply with the requirements of the State of Georgia Department of Natural Resources, Environmental Protection Division, or any other governmental agency having jurisdiction thereof.

ARTICLE VIII MAINTENANCE; CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, and the Retaining Walls and security fencing erected at or near the top of the Retaining Walls. Declarant hereby reserves for the benefit of the Association a perpetual easement across all property in the Community, including Lots, to inspect, maintain or repair the Retaining Walls and security fencing, and to maintain, repair or replace any landscaping, property or improvements located on the Area of Common Responsibility. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements located on the Area of Common Responsibility. Specifically, but not by way of limitation, the Association shall maintain: (a) all storm water detention or retention ponds and storm water drainage system, including any earthen berm dams surrounding same, if and to the extent such ponds and storm water drainage systems are not maintained by a public entity or owners of neighboring property; (b) any recreational facilities, landscaping (including street trees) and improvements located on the Area of Common Responsibility; (c) all entrance features and lighting therefor, if any, whether located on the Area of Common Responsibility or on a Lot; and (c) all sidewalks.

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether located within or outside the Community, where the Board has determined that such maintenance would benefit all Owners.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association, is caused through the willful or negligent act of an Owner or Occupant, his or her family, guests, lessees, or invitees, and is not completely covered or paid for by insurance, then the Association may perform the maintenance, repair, or replacement at the expense of the Owner or Occupant, and all costs shall be added to and become a part of the assessment obligation of the Owner or Occupant and shall become a lien against the Lot of that Owner or Occupant.

The Association shall perform all maintenance in a manner consistent with the Community Wide Standard.

Section 2. Owner's Responsibility. Except as provided in Section 1 above and unless such maintenance responsibility is otherwise assumed or assigned to the Association pursuant to this Declaration, or any Supplementary Declaration, all maintenance of the Lots and all structures, parking areas, landscaping, and other improvements on a Lot shall be the sole responsibility of the Owner, who shall maintain such areas in a manner consistent with the Community-Wide Standard and this Declaration. All landscaping shall be installed and maintained by the Owner in accordance with a landscape plan complying with the Design Guidelines and submitted to and approved by the ARC. In the event that the Board of Directors determines that such areas are not maintained in a manner consistent with the Community-Wide Standard and this Declaration, except in an emergency situation, the Board of Directors shall give the Owner written notice of the Association's intent to provide the necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall state the maintenance, repairs, or replacement deemed necessary. The Owner shall have thirty (30) days after receipt of the notice to complete the maintenance, repair, or replacement. In the event that the maintenance, repair, or replacement is not capable of completion within a thirty (30) day period, the Owner shall begin the work and shall complete it within a reasonable time. If the Board determines that (i) an emergency exists, or (ii) that an Owner has not complied, the Association may provide the maintenance, repair, or replacement at that Owner's sole cost and expense, and all costs including reasonable attorneys' fees shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

Section 3. Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall be Common Property to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

Section 4. Removal of Improvements on Common Property by Declarant. So long as the Declarant has the unilateral option to subject Additional Property to this Declaration as provided in Article XI, Declarant shall have the right, privilege, and option from time to time to remove, add, reconfigure, relocate, modify, and alter any and all improvements located on the Common Property.

ARTICLE IX. INSURANCE AND CASUALTY LOSSES

Section 1. Insurance on Property Maintained by the Association. The Association's Board shall have the authority to obtain insurance for all insurable improvements on property maintained by the Association. The Board may obtain a public liability policy applicable to the property maintained by the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents in their capacities as such, and, may obtain directors' and officers' liability insurance.

Premiums for all insurance obtained by the Association shall be a Common Expense. The policies may contain a reasonable deductible, and the amount thereof shall be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee, for the benefit of the Association and its members. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company licensed to do business in Georgia.
- (b) Exclusive authority to adjust losses under the Association's policies shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related hereto.
- (c) The Board shall be required to make every reasonable effort to secure insurance policies that will provide: (A) a waiver of subrogation by the insurer as to any claims against the Association, its officers, directors and manager, the Owners and their respective tenants, servants, agents, and guests; (B) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash; (C) a provision that no policy may be canceled, invalidated, suspended or subjected to nonrenewal on account of any one or more individual Owners; and (D) that no policy may be canceled or substantially modified or subjected to nonrenewal without at least thirty (30) days prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined by the Board using its best business judgment.

Section 2. Repair and Reconstruction. In the event of damage to or destruction of all or any part of the improvements on the property maintained by the Association as a result of any event covered by the Association's insurance, unless seventy-five percent (75%) of the Total Association Vote and the Declarant (so long as the Declarant has an option unilaterally to subject Additional Property to this Declaration as provided in Article XI) decide within sixty (60) days after the loss not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure.

If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Property shall be repaired or reconstructed.

If it is determined in the manner described above that the damage or destruction to the Common Property shall not be repaired or reconstructed and no alternative improvements are authorized, the affected portion of the properties shall be cleared of all debris and ruins. Thereafter, the properties shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community Standard.

Notwithstanding anything to the contrary contained herein, in the event of damage or destruction of any portion of the Retaining Walls in the Community, whether or not as a result of any event covered by the Association's insurance, the portion of the Retaining Wall affected shall be repaired or reconstructed as necessary, in accordance with the plans and specifications which shall be designed by a professional engineer licensed in the State of Georgia, and the Association shall not have the right to vote on whether or not to repair the Retaining Walls.

(a) Cost Estimates. After a casualty causing damage to property maintained by the Association, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures, if any, to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(b) Source and Allocation of Proceeds. If insurance proceeds are not sufficient to defray the estimated costs of reconstruction and repair of the property maintained by the Association, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment in an amount necessary to cover the insufficiency shall be made against all of the members without the necessity of a vote of the members or compliance with Article V, Section 5 above. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be distributed equally to the Owners or credited to the next assessment chargeable to the Owners.

(c) Plans and Specifications. Any reconstruction or repair of the property maintained by the Association shall be substantially in accordance with the plans and specifications under which the Community was originally constructed, except where changes are necessary to comply with current applicable codes.

(d) Damage and Destruction to Improvements on Lots. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner within seventy five (75) days after the damage or within the required period and shall be diligently and continuously pursued until their completion. Alternatively, the Owner may demolish and remove all damaged improvements on the Lot within seventy five (75) days after such damage or destruction and maintain the property in a neat and clean condition consistent with the Community Standard.

ARTICLE X. CONDEMNATION

Whenever all or any part of the Area of Common Responsibility shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Owners representing at least sixty-seven percent (67%) of the Total Association Vote and of the Declarant, as long as the Declarant owns any property described on Exhibit "A" or Exhibit "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Area of Common Responsibility on which improvements have been constructed, then the Association shall restore or replace such improvements so taken on the remaining land included in the Area of Common Responsibility to the extent lands are available, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property described in Exhibit "A" or Exhibit "B" of this Declaration, and Owners representing at least seventy-five percent (75%) of the Total Association Vote shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the provisions in Article IX hereof regarding the disbursement of funds for the repair of casualty damage or destruction shall apply.

If the taking does not involve any improvements on the Area of Common Responsibility, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such

restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors shall determine.

**ARTICLE XI.
ANNEXATION OF ADDITIONAL PROPERTY**

Section 1. Annexation Without Approval. The Declarant shall have the unilateral right, privilege, and option, from time to time at any time until all property described on Exhibit "B," attached hereto, has been subjected to this Declaration or fifteen (15) years from the date of the recording of this Declaration, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the Additional Property described in Exhibit "B." The Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex Additional Property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibit "A" or Exhibit "B" and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration annexing such Additional Property in the public records of Gwinnett County, Georgia. Such Supplemental Declaration shall not require the consent of other Owners, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Section 2. Annexation With Approval. Subject to the consent of the owner thereof, the Association may annex real property other than that described on Exhibit "B," and following the expiration of the right in Section 1, any property described on Exhibit "B," to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Owners representing a Majority of the votes of the Association represented at a meeting duly called for such purpose and the consent of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 1 of this Article.

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the public records of Gwinnett County, Georgia. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed. Any such annexation shall be effective upon filing unless otherwise provided therein.

Section 3. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants, restrictions, and easements. Such additional covenants, restrictions, and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property.

Section 4. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibit "A" or Exhibit "B."

**ARTICLE XII.
MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

BK47717PG0328

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number) (therefore becoming an "Eligible Mortgage Holder") will be entitled to timely written notice of:

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

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

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

(d) any proposed action, which would require the consent of a specified percentage of Mortgagees.

Section 2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Association easement areas.

Section 3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 4. Amendments by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements, which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 5. VA/HUD Approval. During the Declarant Control Period, the following actions shall require the prior approval of the U.S. Department of Veterans Affairs ("VA") (so long as the VA is guaranteeing any Mortgage in the Community), and the U.S. Department of Housing and Urban Affairs ("HUD") (so long as HUD is insuring any Mortgage in the Community); annexation of Additional Property to the Community, except for annexation by Declarant in accordance with Article XI; mergers and consolidations; dissolution; and material amendment of the Declaration, Bylaws or Articles of Incorporation.

Section 6. Applicability of This Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Georgia law for any of the acts set out in this Article.

Section 7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such

action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

**ARTICLE XIII.
EASEMENTS**

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and the Common Property, due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered (in accordance with the terms of this Declaration). The easement shall be five (5) feet, as measured from any point on the common boundary between each Lot and the Common Property, along a line perpendicular to such boundary at such point. However, an easement for encroachment shall not exist if the willful conduct by an Owner, tenant, or the Association caused the encroachment.

Section 2. Easements for Use and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of entry and exit, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his or her Lot, subject to the following provisions:

(i) the right of the Association to charge reasonable uniform admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions of the Common Property at certain designated times by an Owner, his or her family, tenants, guests, and invitees, or by a separate group or entity;

(ii) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against his or her Lot which is hereby provided for remains unpaid; and, for a reasonable period of time for a violation of the Declaration, Bylaws, or rules and regulations:

(iii) the right of the Association to borrow money for the purpose of improving the Common Property, or for constructing, repairing, or improving any facilities located or to be located on the Common Property, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property. However, the Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements, and privileges reserved or established for the benefit of Declarant, any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community (Any provision in this Declaration or in any Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights in the Mortgage by the holder of the Mortgage in the event of a default shall not cancel or terminate any rights, easements or privileges reserved or established in this Declaration for the benefit of Declarant, any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community.); and

(iv) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to any conditions agreed on by the members of the Association.

(b) Except as otherwise provided herein, any Owner may delegate his or her right of use and enjoyment in and to the Common Property to the members of his or her family, tenants and guests. An Owner shall be deemed to have made a delegation of all these rights to the Occupants of the Owner's Lot, if leased.

Section 3. Easements for Utilities. There is reserved to the Declarant, Approved Builders, and the Association blanket easements upon, across, above, and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining (a) all utilities serving the Community or any portion of the Common Property, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, (b) water runoff and storm drainage systems, and (c) any other services such as, but not limited to, a master television antenna system, cable television system, or security system which may be installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, to do or to authorize the installation, repairing, replacing, and maintaining of the wires, conduits, cables, and other equipment related to providing any such utility or service. Should a party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or Board, as applicable, shall have the right to grant such easement.

Section 4. Easement for Entry. In addition to the right of the Board to exercise self help as provided in Article XIV, Section 2, the Board shall have the right, but not the obligation, to enter upon any property within the Community for emergency, security, and safety reasons. This right may also be exercised by the agents of the Association, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. The Board shall have the right to enter to cure any condition that may increase the possibility of a fire, slope erosion, or other hazard if an Owner or Occupant does not cure the condition after request by the Board and in such event, the Owner shall be obligated to reimburse the Association for the cost of curing such condition and the Association may charge such cost to the Lot, as a special assessment in accordance with Article V, Section 5 (Specific Assessments) herein. For purposes of this Section, a water or other utility leak, fire, strong foul odor, obvious insect infestation, or sounds indicating that a person or animal might be injured or sick and require immediate medical attention shall be considered emergencies justifying immediate entry onto any Lot. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a property shall exist.

Section 5. Easement for Maintenance. Declarant expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required pursuant to this Declaration. This maintenance shall be performed with a minimum of interference to the quiet enjoyment of a Lot.

Section 6. Public in General. The easements and rights created in this Article do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, that nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the Gwinnett County, Georgia records or which may exist in favor of property owners adjoining the Community. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Community), all or any portion of the Community which, in the reasonable opinion of the Board, may be legally necessary to prevent a

dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

**ARTICLE XIV.
GENERAL PROVISIONS**

Section 1. Enforcement. The Community shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal, and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Lots and the Common Property; provided, copies of all such rules and regulations shall be furnished to all Owners and Occupants. Any rule or regulation may be repealed by the affirmative vote or written consent of a Majority of the total Association vote at an annual or special meeting of the membership. Every Owner and Occupant shall comply with the Declaration, Bylaws, and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Lot Owners, to take action to enforce the terms of the Declaration, Bylaws, or rules and regulations.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote or to use the Common Property for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board to limit ingress and egress to or from a Lot. In the event that any Occupant of a Lot violates the Declaration, Bylaws, or a rule or regulation and a fine is imposed, notice of such violation shall be sent to the Owner and Occupant, and the fine shall first be assessed against such Occupant; provided, however, if the fine is not paid by the Occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association, and the fine shall be an assessment and a lien against the property until paid. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

The Board shall not impose a fine, suspend the right to vote, or suspend the right to use the Common Property (provided, however, if an Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association, suspension of the right to vote and the right to use the Common Property shall be automatic); unless and until the Association has sent or delivered written notice to the violator as provided in subsection (a) below. Any such fine or fines may be effective or commence upon the sending of such notice or such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge such fine under subsection (b) below.

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

(b) **Hearing.** If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board may establish rules

of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time.

Section 2. Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section 1 of this Article. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

The Association or its duly authorized agent shall have the power to enter a Lot or upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, or the rules and regulations; provided, however, written notice shall be given to the Owner of the Lot at least two (2) days prior to the time that any items of construction are altered or demolished. All costs of self help, including reasonable attorney's fees, shall be assessed against the violating Lot Owner and shall be collected as provided herein for the collection of assessments. Furthermore, the Board of Directors shall have the authority to record in the Gwinnett County, Georgia land records notices of violation of the provisions of the Declaration, the Bylaws, Design Guidelines and rules and regulations.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless at least sixty-six and two-thirds percent (66 2/3%) of the record Owners execute an agreement to prevent renewal of the covenants and such agreement is recorded and an attorney's affidavit confirming ownership of the Lots or such other requirement as provided in O.C.G.A. § 44 5 60. A written instrument reflecting termination must be recorded within two (2) years prior to the expiration of the initial twenty (20) year period or any subsequent twenty (20) year period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Section.

Section 4. Amendment.

(a) This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict; (ii) if an amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the property subject to this Declaration; (iii) if an amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable the lender or purchaser to make or purchase Mortgage loans on the property subject to this Declaration; or (iv) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the property subject to this Declaration. However, any such amendment shall not adversely affect the title to any Owner's Lot unless the Owner consents to the

amendment in writing. Further, so long as Declarant has the right unilaterally to subject Additional Property to this Declaration as provided in Article XI, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner, nor shall it adversely affect title to any Lot without the consent of the affected Owner.

(b) 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 holding at least two thirds (2/3) of the Total Association Vote and the consent of the Declarant (so long as Declarant has an option unilaterally to subject Additional Property to this Declaration as provided in Article XI). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified in the amendment. No provision of this Declaration which reserves, grants, or exempts special rights, easements, or exemptions to the Declarant or to any Approved Builder shall be amended or removed without the Declarant's or Approved Builder's prior written consent so long as the Declarant or Approved Builder owns any property in the Community, or which is subject to annexation to the Community, primarily for development and/or sale.

(c) In addition to the above, within sixty (60) after the end of the period of Declarant control, the Board is authorized, without a vote of the Membership, to amend this Declaration to submit the Community to the Property Owners Association Act of Georgia, O.C.G.A. § 44-3-225, *et seq.*

Section 5. SECURITY. THE ASSOCIATION OR THE DECLARANT MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SAFETY IN THE COMMUNITY. HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES ACKNOWLEDGES AND AGREES THAT NEITHER THE ASSOCIATION NOR THE DECLARANT IS A PROVIDER OF SECURITY AND NEITHER PARTY SHALL HAVE A DUTY TO PROVIDE SECURITY FOR THE COMMUNITY. FURTHERMORE, NEITHER THE DECLARANT NOR THE ASSOCIATION GUARANTEES THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE COMMUNITY AND COMMIT CRIMINAL ACTS NOR DOES THE DECLARANT OR THE ASSOCIATION GUARANTEE THAT CRIMINAL ACTS WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY, AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH OWNER. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

Section 6. Dispute Resolution. Any Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any director or officer or any agent of the Association. The Owner or Occupant shall in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time, and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing.

Section 7. Partition. The Common Property shall remain undivided, and no Owner or any other Person shall bring any action for partition or division of the whole or any part of the Common Property without the written consent of all Owners and all holders of all Mortgages encumbering any portion of the Community.

Section 8. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 9. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

Section 10. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 11. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 12. Indemnification. In accordance with the Georgia Nonprofit Corporation Code, and to the full extent allowed by Georgia law, the Association shall indemnify every person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such person is or was serving as a director, officer, or committee member of the Association, against any and all expenses, including attorney's fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the person is proper under the circumstances.

Section 13. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation, rules and regulations, Design Guidelines, and any amendments, so long as there is development and construction related to the initial sale of residences constructed in the Community and so long as Declarant has the right to add Additional Property to the Community in accordance with Article XI hereof, it shall be expressly permissible for Declarant and any Approved Builder to maintain and carry on, upon such portion of the Community as Declarant or any Approved Builder may deem necessary, such facilities and activities as in the sole opinion of Declarant or any Approved Builder may be required, convenient, or incidental to Declarant's or any Approved Builder's development, construction, and sales activities related to property described on Exhibit "A" and Exhibit "B" to this Declaration, including without limitation the following:

(a) the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in the Community, including without limitation for the purpose of constructing, inspecting, repairing or maintaining Retaining Walls or any security fencing therefor upon any Lot;

(b) the right to tie into any portion of the Community with driveways, parking areas, and walkways;

(c) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over the Community.

(d) the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, residences, model residences, and sales offices. Declarant and any Approved Builder may use residences, offices, or other buildings owned or leased by Declarant or an Approved Builder as model residences and sales offices and may also use recreational facilities available for use by the Community as a sales office without charge.

Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent so long as the Declarant or an Approved Builder owns any property in the Community, or which is subject to annexation to the Community, primarily for development and/or sale.

Section 14. Section Intentionally Deleted.

Section 15. Financial Review. A review of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's reviewed financial statement at the annual meeting, by a Majority of the Association vote present, or represented by proxy, the Owners may require that the accounts of the Association be audited as a Common Expense by a public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of an audited financial statement within ninety (90) days of the date of the request.

Section 16. Sale of Lots. An Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give written notice to the Board of Directors of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish to the Board as part of the notice (a) the name and address of the intended grantee; and (b) such other information as the Board may reasonably require. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give written notice to the Board of Directors of his or her ownership of the Lot. Upon failure of a Owner to give the required notice within the seven (7) day time period provided herein, the Board may levy fines against the Lot and the Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

Section 17. Agreements. Subject to the prior approval of Declarant (so long as the Declarant has an option to unilaterally subject Additional Property to this Declaration as provided in Article XI) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 18. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate the right or privilege.

Section 19. Variances. Notwithstanding anything to the contrary contained in this Declaration, the Declarant, as long as it owns a Lot for sale within the Community, and the Board of Directors or its designee shall be authorized, but not required, in its sole discretion to grant individual variances from any of the provisions of this Declaration, the Bylaws, and any rule, regulation, or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case would not materially harm other Owners or negatively affect other Owners' quality of life in the Community.

Section 20. Disclosures.

Each Owner and Occupant acknowledge the following:

(a) The Community is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

(b) The Community is located in a rural area customarily used for the raising of hogs, cows, chickens, horses, and other farm-related animals and crops, and may be subject to the noises and odors typical of a rural area.

(c) The natural light available to and views from the dwelling on a Lot may change over time due to, among other circumstances, additional development and the removal or addition of landscaping.

(d) No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.

(e) No representations are made regarding the schools that currently or may in the future serve the Community.

(f) Since in every community, there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of the Community that an Owner or Occupant may find objectionable and that it shall be the sole responsibility of the Owners and Occupants to become acquainted with community conditions that could affect the Community.

(g) Declarant may be constructing portions of the Community and engaging in other construction activities related to the construction of Common Property and additional phases of the Community. Such construction activities may, from time to time, produce certain conditions in the Community, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic, or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; (vii) temporary

interruption of utilities; and/or (viii) other conditions that may threaten the security or safety of Persons on the Community. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions on the Community resulting from renovation and construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of the Declaration.

(h) Declarant shall not be responsible for responding to or taking any affirmative action on behalf of the Association or an individual member of the Association to mitigate, alleviate, remedy or cure any off-site conditions that may directly impact the Community or any portion thereof, and such inaction by the Declarant shall not constitute a breach of fiduciary duty by the directors and officers of the Association that are appointed by the Declarant, pursuant to Article III, Part A, Section 2 of the Bylaws.

(i) During the course of construction, fill dirt, rocks or soil may be deposited or buried on Lots within the Community as needed for efficient construction; neither Declarant nor the Association shall have any obligation to remove same, nor any liability for the depositing or burying of such materials.

(j) Portions of the Community lie within the designated flood hazard property depicted as Flood Zone "AE" per F.I.R.M. Panel Number 1303220125C.

(k) A 25' undisturbed buffer shall be maintained adjacent to all streams running through the Community, in addition to a 50' buffer and a 75' impervious setback, all as shown on the Survey.

(l) Conservation Space shown on the Survey shall remain permanently protected and shall not be disturbed, cleared or developed except in accordance with Section 1316.6.b of the 1985 Zoning Resolution of Gwinnett County and O.C.G.A. Section 36-22-1, *et seq.*

(m) Permanent structures and trees are not allowed in sanitary sewer easements shown on the Survey.

(n) Some portions of the Community have been developed on land with a steep grade which has required the construction of Retaining Walls that may be 10' or higher in various locations, and the installation of security fencing at or near the top of the Retaining Walls. The areas with a steep grade and Retaining Walls pose a risk of serious injury and other safety issues in the event of a fall. No parent should allow minor children to play or be left unattended in these areas. Walking in these areas shall be at the risk of the user and neither the Declarant, the Association, nor any Approved Builder shall be held liable to any Person for any claim, damage, or injury occurring thereon or related to the use thereof.

(o) The Community is subject to all covenants, conditions, restrictions, requirements and easements shown on the Survey, including but not limited to the utility, drainage, sanitary sewer easements, and building setbacks shown thereon.

Section 21. Preparer. This Declaration was prepared by Seth G. Weissman, Weissman, Nowack, Curry & Wilco, P.C., One Alliance Center, 4th Floor, 3500 Lenox Road, Atlanta, Georgia 30326.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned, being the duly appointed officers of Declarant herein, have executed this instrument and affixed the corporate seal this 21st day of March, 2007.

DECLARANT:

VINTAGE COMMUNITIES, INC.,
a Georgia corporation

By: Linton N. Swindell
Linton N. Swindell, President

Signed, sealed, and delivered this 21
day of March, 2007
in the presence of:

Karl R. [Signature]
Witness

Barbara P. Brown
Notary Public

My Commission Expires:

Notary Public, Gwinnett County, Georgia
My Commission Expires June 7, 2010
[NOTARY SEAL]

[CORPORATE SEAL]



47717
00339

BK47717PG0339

EXHIBIT "A"

Property Submitted

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 004 of District 3, Gwinnett County, Georgia, as more particularly described on the Final Plat of Ashbury Park recorded in Plat Book 119, Pages 130-131, Gwinnett County, Georgia records.

47717
00340

BK47717PG0340

EXHIBIT "B"

Additional Property

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 2 of District 1, and Land Lots 3, 4 and 5 of District 3, Gwinnett County, Georgia.