

UPON RECORDING RETURN TO:

David N. Dorough, Jr.
Dorough & Dorough, LLC
Attorneys At Law
160 Clairemont Avenue
Suite 650
Decatur, Georgia 30030
(404) 687-9977

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
HERITAGE ON MEMORIAL

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION, BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ.* OR THE PROVISIONS OF THE GEORGIA CONDOMINIUM ACT, O.C.G.A. 4-3-70, *ET SEQ.*

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
 RESTRICTIONS AND EASEMENTS
 FOR
 HERITAGE ON MEMORIAL

- TABLE OF CONTENTS -

	<u>Page Number</u>
ARTICLE 1 <u>DEFINITIONS</u>	1
1.1 <u>ARTICLES OF INCORPORATION</u>	1
1.2 <u>ASSOCIATION</u>	2
1.3 <u>BOARD OF DIRECTORS OR BOARD</u>	2
1.4 <u>BYLAWS</u>	2
1.5 <u>COMMON PROPERTY</u>	2
1.6 <u>COMMUNITY</u>	2
1.7 <u>COMMUNITY-WIDE STANDARD</u>	2
1.8 <u>CONSERVATION AREA</u>	2
1.9 <u>DECLARANT</u>	2
1.10 <u>GATE SYSTEM</u>	3
1.11 <u>LIMITED COMMON PROPERTY</u>	3
1.12 <u>MORTGAGE</u>	3
1.13 <u>MORTGAGEE</u>	3
1.14 <u>OCCUPANT</u>	3
1.15 <u>OWNER</u>	3
1.16 <u>PERSON</u>	3
1.17 <u>SUPPLEMENTARY DECLARATION</u>	3
1.18 <u>TOTAL ASSOCIATION VOTE</u>	3
1.19 <u>UNIT</u>	3
ARTICLE 2 <u>PROPERTY SUBJECT TO THIS DECLARATION</u>	4
2.1 <u>PROPERTY HEREBY SUBJECTED TO THIS DECLARATION</u>	4
2.2 <u>UNILATERAL ANNEXATION BY DECLARANT</u>	4
2.3 <u>ANNEXATION BY ASSOCIATION</u>	4
2.4 <u>WITHDRAWAL OF PROPERTY</u>	5
ARTICLE 3 <u>ASSOCIATION MEMBERSHIP AND VOTING RIGHTS</u>	5
3.1 <u>MEMBERSHIP</u>	5
3.2 <u>VOTING</u>	5
ARTICLE 4 <u>ASSESSMENTS</u>	5
4.1 <u>PURPOSE OF ASSESSMENTS</u>	5
4.2 <u>CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS</u>	6
4.3 <u>BUDGET</u>	6
4.4 <u>GENERAL ASSESSMENTS</u>	7
4.5 <u>SPECIAL ASSESSMENTS</u>	7
4.6 <u>SPECIFIC ASSESSMENTS</u>	7
4.7 <u>SUBORDINATION OF LIENS TO MORTGAGES</u>	8
4.8 <u>REMEDIES OF THE ASSOCIATION</u>	8
4.9 <u>DATE OF COMMENCEMENT OF ASSESSMENTS</u>	9

4.10	<u>BUDGET DEFICITS DURING DECLARANT CONTROL</u>	9
4.11	<u>FAILURE TO ASSESS</u>	10
4.12	<u>ESTOPPEL LETTER</u>	10
4.13	<u>WORKING CAPITAL CONTRIBUTION</u>	10
ARTICLE 5 <u>MAINTENANCE; COMMON PROPERTY</u>		11
5.1	<u>ASSOCIATION'S MAINTENANCE RESPONSIBILITY</u>	11
5.2	<u>EXTERIOR UNIT MAINTENANCE</u>	12
5.3	<u>LANDSCAPING MAINTENANCE</u>	13
5.4	<u>PARTY WALLS AND FENCES</u>	14
5.5	<u>FAILURE TO MAINTAIN</u>	14
5.6	<u>GATE SYSTEM</u>	14
5.7	<u>CONVEYANCE OF COMMON PROPERTY BY DECLARANT TO ASSOCIATION; NO IMPLIED RIGHTS</u>	16
5.8	<u>PARTITION</u>	16
5.9	<u>CONDEMNATION</u>	17
5.10	<u>LIMITATION OF LIABILITY</u>	17
5.11	<u>MEASURES RELATED TO INSURANCE COVERAGE</u>	17
5.12	<u>LIMITED COMMON PROPERTY</u>	18
ARTICLE 6 <u>ARCHITECTURAL STANDARDS</u>		19
6.1	<u>GENERAL</u>	19
6.2	<u>GUIDELINES AND PROCEDURES</u>	19
6.3	<u>ARCHITECTURAL GUIDELINES</u>	20
6.4	<u>LIMITATION OF LIABILITY</u>	20
6.5	<u>NO WAIVER</u>	21
6.6	<u>VARIANCES</u>	21
6.7	<u>ENFORCEMENT</u>	21
6.8	<u>ARCHITECTURAL REVIEW BY DECLARANT</u>	22
ARTICLE 7 <u>USE RESTRICTIONS AND RULES</u>		22
7.1	<u>RULES AND REGULATIONS</u>	22
7.2	<u>RESIDENTIAL USE</u>	23
7.3	<u>SIGNS</u>	23
7.4	<u>VEHICLES; PARKING</u>	24
7.5	<u>ANIMALS AND PETS</u>	26
7.6	<u>NUISANCE</u>	26
7.7	<u>UNSIGHTLY OR UNKEMPT CONDITIONS</u>	27
7.8	<u>ANTENNAE</u>	27
7.9	<u>FIREARMS</u>	28
7.10	<u>FENCES</u>	28
7.11	<u>AIR-CONDITIONING UNITS</u>	28
7.12	<u>LIGHTING AND DISPLAYS</u>	28
7.13	<u>ARTIFICIAL VEGETATION, GARDENS, PLAY EQUIPMENT, EXTERIOR SCULPTURE, WATER FEATURES AND SIMILAR ITEMS</u>	28
7.14	<u>FLAGS</u>	28
7.15	<u>CONSERVATION EQUIPMENT</u>	29
7.16	<u>CLOTHESLINES</u>	29
7.17	<u>WINDOW TREATMENTS</u>	29
7.18	<u>STORM AND SCREEN DOORS AND WINDOWS; PET DOORS</u>	29
7.19	<u>DRAINAGE</u>	29
7.20	<u>GARBAGE CANS, FIREWOOD, ETC.</u>	29
7.21	<u>SUBDIVISION OF UNIT</u>	30
7.22	<u>HEATING OF UNITS IN COLDER MONTHS</u>	30
7.23	<u>GARAGE SALES</u>	30
7.24	<u>LEASING</u>	30
7.25	<u>OUTBUILDINGS AND SIMILAR STRUCTURES</u>	31

7.26	<u>DECKS, PATIOS, PORCHES, BALCONIES AND COURTYARDS</u>	32
7.27	<u>EXTERIOR DRAPERY</u>	32
7.28	<u>EXTERIOR COLORS</u>	32
7.29	<u>IMPAIRMENT OF UNITS AND EASEMENTS</u>	32
7.30	<u>ABANDONED PERSONAL PROPERTY</u>	32
7.31	<u>STORM WATER DETENTION/RETENTION PONDS, STREAMS AND CREEKS</u>	33
7.32	<u>BUFFER AREAS</u>	33
7.33	<u>SKY TERRACES</u>	33
ARTICLE 8 <u>INSURANCE AND CASUALTY LOSSES</u>		35
8.1	<u>INSURANCE OBTAINED BY ASSOCIATION</u>	35
8.2	<u>INSURANCE OBTAINED BY UNIT OWNERS</u>	37
8.3	<u>DAMAGE AND DESTRUCTION</u>	38
ARTICLE 9 <u>EASEMENTS</u>		39
9.1	<u>GENERAL</u>	39
9.2	<u>EASEMENTS FOR USE AND ENJOYMENT</u>	39
9.3	<u>EASEMENTS FOR ENCROACHMENT AND OVERHANG</u>	40
9.4	<u>EASEMENT FOR UTILITIES – ASSOCIATION</u>	40
9.5	<u>EASEMENT FOR UTILITIES – UNIT OWNER</u>	40
9.6	<u>EASEMENT FOR EMERGENCY ENTRY</u>	41
9.7	<u>EASEMENT FOR MAINTENANCE – ASSOCIATION</u>	41
9.8	<u>EASEMENT FOR MAINTENANCE – UNITS</u>	41
9.9	<u>EASEMENT FOR DRAINAGE</u>	41
9.10	<u>EASEMENT DURING CONSTRUCTION AND SALE PERIOD</u>	42
9.11	<u>EASEMENT FOR PRIVATE STREETS AND SIDEWALKS</u>	43
ARTICLE 10 <u>GENERAL PROVISIONS</u>		43
10.1	<u>ENFORCEMENT</u>	43
10.2	<u>DURATION</u>	44
10.3	<u>OCCUPANTS BOUND</u>	44
10.4	<u>SELF-HELP</u>	44
10.5	<u>TERMINATION OF RIGHTS OF DECLARANT</u>	45
10.6	<u>AMENDMENT</u>	45
10.7	<u>GENDER AND GRAMMAR</u>	46
10.8	<u>SEVERABILITY</u>	46
10.9	<u>CAPTIONS</u>	46
10.10	<u>NO MERGER</u>	46
10.11	<u>PREPARER</u>	47
10.12	<u>NOTICES</u>	47
10.13	<u>NO DISCRIMINATION</u>	47
10.14	<u>SECURITY</u>	47
10.15	<u>DISCLOSURES</u>	48
10.16	<u>INDEMNIFICATION</u>	49
10.17	<u>AGREEMENTS</u>	49
10.18	<u>VARIANCES</u>	49
10.19	<u>LITIGATION</u>	49
10.20	<u>NOTICE OF SALE OR ACQUISITION</u>	50
10.21	<u>CONFLICT</u>	50
10.22	<u>BOOKS AND RECORDS</u>	50
10.23	<u>FINANCIAL STATEMENTS</u>	50

EXHIBITS

EXHIBIT "A" - PROPERTY SUBJECT TO THE DECLARATION

EXHIBIT "B" - ADDITIONAL PROPERTY WHICH MAY BE UNILATERALLY SUBMITTED TO THE DECLARATION BY DECLARANT

EXHIBIT "C" - BYLAWS OF HERITAGE ON MEMORIAL TOWNHOME ASSOCIATION, INC.

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,

RESTRICTIONS AND EASEMENTS

FOR

HERITAGE ON MEMORIAL

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR HERITAGE ON MEMORIAL ("Declaration") is made on the date hereinafter set forth by **JWC MEMORIAL, LLC**, a Georgia limited liability company (hereinafter sometimes called "Declarant");

W I T N E S S E T H

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" hereof; and

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereof to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration;

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

Article 1
Definitions

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

1.1. Articles of Incorporation means the Articles of Incorporation of Heritage on Memorial Townhome Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference, as amended from time to time.

1.2. Association means Heritage on Memorial Townhome Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

1.3. "Board of Directors" or "Board" means the appointed or elected body of the Association, vested with the authority to operate and manage the affairs of the Association under the Georgia Nonprofit Corporation Code, O.C.G.A. § 14-3-101 *et seq.*

1.4. "Bylaws" means the Bylaws of Heritage on Memorial Townhome Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference, as the same may be amended from time to time.

1.5. "Common Property" means any and all real and personal property, and the facilities and improvements located thereon and the easements and other interests therein, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.6. "Community" refers to that certain real property described in Exhibit "A", attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein.

1.7. "Community-Wide Standard" means 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 and may be articulated in the Architectural Guidelines, as set forth in Section 6.3 hereof, but must be consistent with the Community-Wide Standard initially established by the Declarant.

1.8. "Conservation Area" means that portion of the Community containing approximately 3.5 acres of Common Property and identified as such on the recorded subdivision plat(s) for the Community. The use and maintenance of the Conservation Area is subject to the applicable conservation covenants and easements, such conservation easement to be in favor of Fulton County, Georgia, as the same may be recorded in the Fulton County, Georgia land records and set forth in Section 7.34 hereof.

1.9. "Declarant" means **JWC MEMORIAL, LLC**, a Georgia limited liability company, and its successor, successor-in-title or assigns taking title to any portion of the property described in Exhibit "A" or Exhibit "B" hereof for the purpose of development and/or sale and designated as Declarant in a recorded instrument by the then holder of the rights of Declarant hereunder. Any or all of the rights of Declarant set forth in this Declaration, the Articles of Incorporation or the Bylaws may be transferred or assigned in whole or in part to other Persons, provided that the transfer or assignment shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration, the Articles of Incorporation or the Bylaws. No transfer or assignment of the rights of Declarant provided for herein shall be effective unless it is in a written instrument signed by the Declarant and recorded in the public real estate records of Fulton County, Georgia. Any acquisition of title of all remaining Units and undeveloped portions of the Community from Declarant by a first Mortgagee taking title through

foreclosure proceedings shall be deemed to include all rights of Declarant hereunder unless such rights are disclaimed by the Mortgagee in a recorded instrument.

1.10. "Gate System" means the mechanical gate system located at the entrance of the Community which limits and/or restricts vehicular access, ingress and egress to and from the Community from Gibson Street (40' R/W), as more particularly set forth in Section 5.6 hereof.

1.11. "Limited Common Property" means those portions of the Community, whether owned by Declarant or conveyed to the Association as Common Property, where the surface area has been reserved for the benefit and use of a particular Unit as provided in Section 5.12 hereof.

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

1.13. "Mortgagee" means the holder of a Mortgage.

1.14. "Occupant" means any Person occupying all or any portion of a Unit for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.15. "Owner" means the record owner, whether one or more Persons, of the fee simple title to any Unit located within the Community, but excluding a Mortgagee.

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

1.17. "Supplementary Declaration" means a supplement to this Declaration which subjects additional property to the provisions of this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.

1.18. "Total Association Vote" means the votes attributable to the entire membership of the Association (including votes of Declarant) as of the record date for such action, but specifically excluding the votes of any Owners whose voting rights have been suspended as provided herein, regardless of whether such members are present or represented at the meeting, if any, where such votes are to be cast. If, for example, and without limitation, two-thirds (2/3) of the Total Association Vote is required to approve a matter, such matter must receive more than two-thirds (2/3) of the votes attributable to all existing members of the Association as of the record date for such action (and excluding the votes of any Owners whose voting rights have been suspended as provided herein), whether or not such members are present or represented at the meeting, if any, where such votes are to be cast.

1.19. "Unit" shall mean any plot of land within the Community, regardless of whether improvements are constructed thereon, which constitutes a single dwelling site, as shown on the

subdivision plat(s) for the Community recorded in the Fulton County, Georgia land records. The residential dwelling located on each Unit shall be attached by one or more party wall(s) to one or more other residential dwellings located on adjacent Units so that the boundary between such residential dwellings is a line running along the center of the party wall separating said residential dwellings.

The ownership of each Unit shall include the exclusive right to use and possession of any and all portions of the heating and air conditioning units which are appurtenant to and serve each Unit (including, but not limited to, compressors, conduits, wires and pipes) and any driveway, parking pad, walkway, porch, balcony, deck, courtyard, patio, steps, wall, roof, foundation or any similar appurtenance as may be attached to a Unit when such Unit is initially constructed.

The ownership of each Unit shall also include, and there shall automatically pass with the title to each Unit as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interest of an Owner in and to the Common Property as provided herein.

Article 2 Property Subject To This Declaration

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

2.2. Unilateral Annexation By Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time to subject all or any portion of the real property described in Exhibit "B" attached hereto and by this reference incorporated herein, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Fulton County, Georgia land records a Supplementary Declaration executed by the Declarant describing the property being subjected. Any annexation shall be effective upon the filing for record of such Supplementary Declaration in the Fulton County, Georgia land records unless a later effective date is provided therein.

2.3. Annexation by Association. Upon the written consent of: (a) the owner(s) thereof; (b) the Declarant; and (c) the Owners of at least two-thirds (2/3) of the Units, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Fulton County, Georgia land records a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon the filing for record of such Supplementary Declaration in the Fulton County, Georgia land records, unless a later effective date is provided therein.

2.4. Withdrawal of Property. Declarant shall have the right to amend this Declaration to remove any portion of the Community then owned by Declarant or the Association from the coverage of this Declaration and the jurisdiction of the Association, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community. Any withdrawal shall be accomplished by the filing for record of an amendment to this Declaration which describes the property to be removed and is executed by the Declarant and the Owner(s) of the property being removed if not the Declarant. Any withdrawal shall be effective upon filing for record of such amendment in the Fulton County, Georgia land records, unless a later effective date is provided therein. Such amendment shall be executed by the Declarant and the Owner(s) of the property being removed and shall not require the vote or consent of any other Unit Owners.

Article 3 Association Membership and Voting Rights

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

3.2. Voting. Members shall be entitled to cast one vote for each Unit owned. When more than one Person holds an ownership interest in a Unit, the vote for such Unit shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or referendum. The vote attributable to a Unit shall be suspended in the event more than one Person seeks to exercise it. The Board of Directors may suspend the voting rights of an Owner for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, rules and regulations, use restrictions or Architectural Guidelines established pursuant to Section 6.3 hereof.

Article 4 Assessments

4.1. Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and

enjoyment of the Owners of Units, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

4.2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) special assessments; and (c) specific assessments. All assessments, together with late charges (in an amount equal to the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the assessment or installment not paid when due), interest (at a rate determined by the Board from time to time in its sole discretion, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due) and costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and a continuing lien in favor of the Association on the Unit against which each assessment is made. As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of assessments and fees arising hereunder includes costs of collection, which shall include, without limitation, reasonable attorneys' fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with O.C.G.A. 13-1-11(a)(2).

The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each assessment, together with late charges, interest and costs of collection, including, without limitation, reasonable attorneys' fees actually incurred, shall also be the personal obligation of the Person who was the Owner of the Unit at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Unit, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise be exempt from liability for the assessments provided for herein for any reason, including, by way of illustration and not limitation, the following: (a) abandonment of the Unit; (b) nonuse of the Common Property; (c) the Association's failure to perform its obligations required under the Declaration; or (d) inconvenience or discomfort arising out of the Association's performance of its duties. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

4.3. Budget. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. The Board shall cause the budget and the general assessment to be levied against each Unit for the year to be delivered to each member at least thirty (30) days prior to the due date of such general assessment. The budget and the general assessment shall become effective unless disapproved at a meeting by a

majority of the Total Association Vote and the Declarant; provided, however, the Board shall have no obligation to call such a meeting unless a petition for a special meeting is presented to the Board within ten (10) days of the delivery of the notice of the general assessment. In the event the membership and Declarant disapprove the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget has been determined, as provided herein, the budget in effect shall continue.

4.4. General Assessments. General assessments shall be levied equally on all similarly situated Units and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the general assessment shall be paid in one annual installment. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, improvements to the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, the following: (a) sums for property taxes for the Common Property; (b) insurance premiums; (c) legal and accounting fees; (d) management fees; (e) charges for utilities and other services provided by the Association; (f) landscape maintenance; (g) costs to maintain the Community entry features, including any electricity, landscaping and irrigation expenses associated therewith; (h) costs associated with the maintenance of the storm water detention/retention pond(s) and storm water drainage facilities serving the Community; (i) costs incurred to maintain the private streets, sidewalks and street lights; (j) costs to operate and maintain the Gate System; (k) costs to perform exterior maintenance to Units; (l) landscape maintenance; and (m) expenses and liabilities incurred as provided herein, the Articles of Incorporation and Bylaws for the indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others.

4.5. Special Assessments. The Association, acting through the Board of Directors, may levy a special assessment against all Owners subject to assessment for any unbudgeted or unanticipated expenses or expenses in excess of those budgeted. So long as the total amount of special assessments allocated to each Unit in a single fiscal year does not exceed the amount of the annual general assessment in such fiscal year, the Board may impose the special assessment without a vote of the Owners. Except for special assessments levied pursuant to Section 8.3 hereof, any special assessment which would cause the total amount of the special assessments allocated to any one Unit in a single fiscal year to exceed the amount of the annual general assessment must be approved by two-thirds (2/3) of the Total Association Vote and the Declarant in order to be effective. Special assessments shall be paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.6. Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. The failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the

future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. By way of explanation and not limitation, the following shall constitute specific assessments: (a) fines levied pursuant to this Declaration; (b) the working capital contribution as provided in Section 4.13 hereof; (c) the cost of maintenance performed by the Association for which an Owner is responsible; and (d) the costs of providing utilities or services to a Unit.

In addition to the foregoing, the Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Units may be specifically assessed equitably among all of the Units which are benefited according to the benefit received; (b) expenses of the Association which benefit all Units, but do not provide an equal benefit to all Units, may be specifically assessed equitably among all Units according to the benefit received; and (c) expenses of the Association which are attributable to or incurred as a result of an Owner or the Occupants, tenants, guests or invitees of an Owner may be specifically assessed against the Unit of such Owner.

4.7. Subordination of Liens to Mortgages. Notwithstanding anything to the contrary in this Declaration or any other document related thereto or executed in connection therewith, the lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage placed on a Unit, if, but only if, all assessments and charges with respect to such Unit authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the foreclosure of such Mortgage. Such subordination is merely a subordination and shall not relieve an Owner of the personal obligation to pay all assessments coming due during such period of ownership; shall not relieve such Unit from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's transferee by foreclosure); and no sale or transfer of such Unit to the Mortgagee or to any other Person pursuant to a foreclosure, or pursuant to any other proceeding in lieu of foreclosure, shall relieve any existing or previous Owner of such Unit of any personal obligation or relieve such Unit or any Owner of such Unit from liability for any assessment authorized hereunder that becomes due after such sale and transfer.

4.8. Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge (in an amount equal to the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the assessment

or installment not paid when due), interest (at a rate determined by the Board from time to time in its sole discretion, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent) and costs of collection, including, without limitation, reasonable attorneys' fees actually incurred. As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of assessments and fees arising hereunder shall include the costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2). The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a claim of lien with the Office of the Clerk of Superior Court of Fulton County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments.

Each Owner, by acceptance of a deed, vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Unit at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of use and enjoyment in and to the Common Property, and the right to receive and enjoy such services and other benefits as may then be provided by the Association, which may include, without limitation, the deactivation of any card access system, gate code, or other method used in connection with the Gate System that restricts access to the Community. Any such deactivation or suspension shall not affect an Owner's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such Unit in favor of the Association.

4.9. Date of Commencement of Assessments. Assessments shall commence when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a Unit on the date that the Unit has been improved with a dwelling for which a certificate of occupancy has been issued and has been conveyed to an owner who intends to occupy the dwelling, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy. Any Unit which has been approved by Declarant for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant or any other Person, so long as such Unit is approved for use as a model home and is not occupied for residential purposes.

4.10. Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint and remove the directors and officers of the Association, Declarant may, but shall have no obligation to: (a) advance funds or contributions of services or materials or a combination of services and materials, rather than money (herein collectively called "in kind contribution"), or a combination of these, to the Association 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 general, special and specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Community; provided, however, no Mortgage secured by the Common Property or any of the structures or improvements maintained by the Association shall be given in connection with such loan.

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

4.12. Estoppel Letter. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association or its managing agent setting forth the amount of assessments past due and unpaid, including any late charges, interest, fines, or other charges against that Unit. Such request shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. The Association shall, within five (5) business days after receiving a written request therefor, certify to the amount of any unpaid assessments constituting a lien on a specified Unit. The Association may charge a reasonable fee as may be permitted by law as a prerequisite to the issuance of such statement. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Unit shall be binding upon the Association. It is the intent of this provision to comply with O.C.G.A. Section 44-14-15(c), as amended.

4.13. Working Capital Contribution. Upon each and every sale of a Unit after it has been improved with a dwelling for which a certificate of occupancy has been issued, a working capital contribution, in an amount determined by the Board from time to time, shall be collected from the new Owner at the closing of such transaction and disbursed to the Association; or if not collected at closing, shall be paid immediately upon demand to the Association. The working capital contribution shall constitute a specific assessment against the Unit, shall be in addition to, not in lieu of, the general assessment and shall not be considered an advance payment of such assessment. The working capital contribution may be used by the Association for any purpose which provides a direct benefit to the Community, including, without limitation, for the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions of this Declaration. Notwithstanding the foregoing, the working capital contribution shall not apply to the holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, but shall apply to the Owner acquiring title to the Unit from the foreclosing Mortgagee.

Article 5
Maintenance; Common Property

5.1. Association's Maintenance Responsibility. The Association shall maintain and keep in good repair the Common Property, which maintenance shall include, without limitation, the maintenance, repair and replacement of all landscaping and improvements situated thereon.

The Association shall also maintain (whether or not constituting Common Property) the following: (a) all entry features and entry area landscaping serving the Community, including, without limitation, any signage, monuments, and any irrigation system and/or lighting system which provides water and electricity to such entry features, regardless of whether the same are located on Common Property or a public right-of-way; (b) exterior lighting serving the Community; provided, however, each Owner of a Unit shall be responsible for the maintenance, repair and replacement of any exterior lighting attached to, exclusively serving or located on the residential dwelling on such Unit; (c) certain maintenance to the exterior of a residential dwelling located on a Unit as provided in Section 5.2 hereof; (d) landscaping in the Community as provided in Section 5.3 hereof; (e) the private streets, sidewalks and street signs; (f) the Gate System; (g) all storm water detention/retention pond(s) and storm water drainage facilities serving the Community and any landscaping, gate, wall, fence or other enclosure surrounding the storm water detention/retention pond(s), if and to the extent such facilities are not maintained by a governmental entity or third party and regardless of whether the same are located on a Unit or Common Property; (h) all fencing in the Community, including, without limitation, perimeter fencing and approved fencing installed on Limited Common Property, if any; (i) all pipes, wires, conduits, utility lines, plumbing and water and sanitary sewer pipes or facilities that serve more than one Unit or any portion of the Common Property, if and to the extent the same are not maintained on an ongoing basis by a governmental entity or third party; (j) the centralized mailbox area(s) and the mailboxes located thereon; and (k) any retaining walls located in the Community.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs associated therewith, not paid for by insurance, shall be assessed against the Unit of such Owner as a specific assessment. All maintenance performed by the Association shall be consistent with the Community-Wide Standard.

The Association shall have the right, but not the obligation, to maintain property it does not own, regardless of whether such property is located within or outside of the Community, where the Board has determined that such action would benefit the Owners. In addition, the Board of Directors, without a vote of the members, but with the consent of the Declarant, shall have the right to enter into easement and covenant to share cost agreements where the Board has determined that such action would benefit the Owners. The Board of Directors may authorize the officers of the Association to enter into contracts with any Person or Persons to perform maintenance hereunder on behalf of the Association.

5.2. Exterior Unit Maintenance.

(a) By the Association. As provided in Section 5.1 of the Declaration, the Association shall be responsible for maintaining certain portions of the Units. The Association shall maintain and keep in good repair the following: (i) all water and sanitary sewer pipes, lines, conduits or facilities which serve more than one (1) Unit, regardless of whether the same are located within or outside of the boundaries of such Unit, to the extent that such pipes and facilities are not maintained on an ongoing basis by a public or private utility company or by a governmental authority; (ii) exterior surfaces of garage doors (but the Owner shall be responsible for the operation of the garage doors and all related components and equipment); (iii) all roofs, downspouts and gutters, including, roof decking and shingles; (iv) all exterior building surfaces with the exception of hardware and glass; provided, however, the Association shall not be responsible for waterproofing foundations either above or below grade; and (v) the painting of shutters attached to the residential dwelling located on a Unit, if any.

Upon resolution of the Board and approval by Owners representing at least a Majority of the Units and the consent of Declarant, the Association may assume responsibility for providing additional exterior maintenance of such Units and the structures located thereon long as all Units are maintained according to the same standard, with the expenses thereof to be included as part of the general assessment as.

The Board of Directors may authorize the officers of the Association to enter into contracts with any Person or Persons to perform maintenance hereunder on behalf of the Association.

(b) By the Unit Owner. Unless such maintenance is assumed by the Association as provided in subsection (a) above, each Unit Owner shall be responsible for, regardless of whether located within or outside the Unit boundary, the maintenance, repair, and replacement of: (i) the structural components of the Unit, including building foundations and footings and waterproofing; (ii) any driveway, walkway, steps, or stoops exclusively serving a Unit; (iii) windows (including glass surfaces) and window frames, screens, glass, doors (including screen and storm doors, hinges, frames and door frames and hardware which is part of the entry system, with the exception of the exterior surfaces of garage doors which shall be maintained by the Association as provided in subsection (a) above) and door frames on the Unit; (iv) any heating and air conditioning unit or similar equipment, and any pipes, wires, or conduits, serving only the Unit; (v) any personal property, appliances, equipment or fixtures contained within the Unit; (vi) pipes which exclusively serve one (1) Unit, whether located within or without the boundaries of such Unit; (vii) lighting fixtures pertaining to a particular Unit and being located outside an entryway or in a garage; and (viii) the Limited Common Property appurtenant to the Unit.

Notwithstanding the foregoing, each Owner of a Unit shall be obligated to: (i) perform his or her maintenance responsibility in such manner so as not to unreasonably disturb other Persons in or on other Units; (ii) promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible; and (iii) not make any alterations or

additions to or on any portion of a Unit which is to be maintained by the Association, if any, remove any portion thereof, or do anything with respect to the exterior or interior of such Unit or the structures located thereon which would or might increase the Association's maintenance costs or jeopardize or impair the safety or soundness of any Unit or any structure or improvement located thereon, without first obtaining the written consent of the Board and all Owners and Mortgagees of the Units affected. Each Owner shall also not impair any easement without first obtaining written consent of the Association and of the Owner or Owners and their Mortgagees for whose benefit such easement exists.

5.3. Landscaping Maintenance.

(a) By the Association. As provided in Section 5.1 above, the Association shall maintain and keep in good repair the lawn and landscaping improvements located on the exterior portions of the Community, which shall include without limitation, the following: (a) lawn mowing on a regular basis; (b) tree and shrub pruning; and (c) watering landscaped areas.

Any common irrigation system installed by the Declarant or the Association, as the case may be, shall be Common Property, operated, maintained, repaired and replaced by the Association.

The Board of Directors in its sole discretion may leave portions of the Community, including, without limitation, the Conservation Area, as undisturbed natural areas and may change the landscaping in the Community at any time and from time to time or may, with the consent of the Declarant promulgate rules setting forth the extent of maintenance to be performed. The Board of Directors may promulgate rules setting forth the rights of Owners with respect to adding or modifying landscaping improvements, including, for example allowing seasonal flowering plants in certain areas of the Community at the expense of the Owner. Landscaping improvements installed by the Owner in accordance with the provisions of this Declaration shall be maintained by the Owner in a manner consistent with the Community-Wide Standard. Any landscaping improvements originally installed by an Owner which are not properly maintained, including, but not limited to, damaged, diseased or dead plants, shrubs and trees may, at the sole discretion of the Board of Directors, be removed from the Community. The costs associated with removing any damaged, diseased or dead plants, shrubs and trees originally installed by an Owner in the Community, may be assessed against the Owner and the Lot as a specific assessment.

(b) Limited Common Property. Each Owner of a Unit shall maintain any Limited Common Property appurtenant to such Unit, which shall include, without limitation, the following: (i) collection and proper disposal of all pet waste; (ii) tree and shrub pruning and weeding, as applicable; (iii) shrub fertilization; (iv) monitoring plants, shrubs and lawns for insecticide and disease; and (iv) such other maintenance as determined by the Board to be in the best interest of the Community. The Association shall mow any lawn area within the Limited Common Property on the same schedule and in the same manner as other Common Property lawns. Except maintenance by the Association as provided in Sections 5.1, 5.2 and 5.3 hereof,

Owners and Occupants shall be responsible for maintaining all landscaping or other improvements located within any Limited Common Property appurtenant to a Unit.

5.4. Party Walls and Fences. Each wall or fence built as part of the original construction of the residential dwelling located on a Unit which shall serve and separate any two (2) adjoining residential dwellings located on Units thereon shall constitute a party wall or fence, as applicable, 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. All such repair or rebuilding shall be done within a reasonable time, and in such workmanlike manner with materials comparable to those used in the original wall or fence, and shall conform in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. Whenever any such wall or fence or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size as the original wall or fence, as applicable.

5.5. Failure to Maintain. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement to be performed. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-day period, to commence such work which shall be completed within a reasonable period of time. If an Owner does not comply with the provisions hereof, the Association may provide such maintenance, repair or replacement and all costs thereof shall be assessed against the Unit as a specific assessment. This Section shall not apply to Units owned by Declarant unless improved with a dwelling and occupied as a residence.

5.6. Gate System. It is anticipated that the Declarant will install the Gate System in the Community. Each Owner, by accepting a deed to a Unit, shall be deemed to acknowledge and agree to the following:

(a) The Board of Directors, with the consent of the Declarant, which consent shall not be unreasonably withheld, shall determine when the Gate System will be operational.

(b) Neither Declarant, the Association nor their respective officers, directors, members, representatives or agents shall be responsible for the security of Owners, Occupants or their family members, guests, invitees or property. NEITHER DECLARANT, THE ASSOCIATION NOR ANY OWNER OR OCCUPANT GUARANTEES OR ASSURES TO ANY OTHER OWNER OR OCCUPANT NOR ANY OTHER PARTY WHOMSOEVER THAT THE GATE SYSTEM WILL IN ANY MANNER WHATSOEVER PROVIDE PERSONAL PROTECTION OR SECURITY TO ANY OWNER OR OCCUPANT, THEIR PERSONAL POSSESSIONS OR TO GUESTS OR INVITEES, OR TO ANY OTHER PERSON, AND EACH OWNER, BY THE ACCEPTANCE OF A DEED TO A UNIT, SHALL HAVE ASSUMED THE ENTIRE RISK AS BETWEEN SUCH OWNER AND DECLARANT OR THE ASSOCIATION, AS APPLICABLE, FOR ANY LOSS OR DAMAGE TO PERSON OR PROPERTY WITHIN THE COMMUNITY ARISING FROM ANY DEFICIENCY, FAILURE OR DEFECT IN THE GATE SYSTEM OR OTHERWISE.

(c) All governmental authorities shall have access to the Community for law enforcement, safety and emergency purposes. Each Owner shall look solely to the applicable governmental authority for the provision of law enforcement and police protection.

(d) The Gate System is not intended to replace or to serve in lieu of individual alarm systems or other measures designed to provide security at a residence or within any Unit. Each Owner is encouraged to install personal security devices upon and within such Owner's Unit to the same extent that would be prudent if the Gate System did not exist.

(e) The Gate System will be installed based upon the representations of vendors regarding the operation and performance capabilities of the components of the Gate System.

(f) DECLARANT DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER REGARDING THE GATE SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR THE PURPOSES FOR WHICH IT WAS DESIGNED. Declarant does not guarantee that the Gate System will avert or prevent occurrences or consequences which the Gate System is designed to avert or prevent.

(g) The Gate System shall be owned, operated, and maintained by the Association at its sole cost and expense and the costs associated therewith shall be included in the general assessment as provided in Section 4.4 hereof. Declarant shall not be required to operate or maintain the Gate System.

(h) Each Owner shall use the Gate System in the proper manner and within the rules and regulations relating thereto as may be adopted from time to time by the Board of Directors.

(i) Each Owner and Occupant acknowledges and understands that nonpayment of assessments or a violation of any provisions of this Declaration, Bylaws, rules and regulations, use restrictions or Architectural Guidelines shall entitle the Association to deactivate any card

access system, gate code or other method used in connection with the Gate System as authorized under Section 4.8 and Section 9.2(a) of the Declaration.

5.7. Conveyance of Common Property by Declarant to Association; No Implied Rights. Declarant may transfer or convey to the Association, at any time and from time to time, any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and, if and as provided in Section 5.1 hereof, maintained by the Association for the benefit of its members. So long as Declarant owns any property primarily for development and/or sale in the Community or owns any property that can be annexed to the Community as provided herein, Declarant may, upon written notice to the Association, require the Association to reconvey to Declarant all or any portion of the Common Property, improved or unimproved, at no charge to Declarant, without a vote of the members of the Association, if all or a portion of the Common Property is: (a) found by Declarant to have been conveyed in error; (b) needed by Declarant to make adjustments in property boundary lines; or (c) reasonably determined by Declarant to be needed by Declarant due to changes in the overall scheme of development for the Community.

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

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

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

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

In addition to the foregoing, the Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be liable for injury or damage to any Person or property: (a) caused by the elements or by an Owner or any other Person; (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association or from any portion of the Common Property; or (c) caused by any street, pipe, plumbing, drain, pond, lake, dam, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair.

5.11. Measures Related to Insurance Coverage.

(a) The Board of Directors shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Community that are the maintenance responsibility of the Unit Owner which will, in the Board's sole discretion, decrease the possibility of fire or other damage to any improvements located in the Community, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring Owners to: (i) turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; (ii) insulate pipes sufficiently or take other preventive measures to prevent water pipes from freezing; (iii) install smoke detectors; (iv) make improvements to the Owner's Unit; and (v) take such other measures

as the Board may reasonable require, so long as the cost of such work does not exceed the amount of the general assessment applicable to the Unit in any twelve (12) month period.

(b) In addition to, and not in limitation of, any other rights the Association may have, if any Unit Owner does not comply with any reasonable requirement made by the Board pursuant to Section 5.11(a) above, the Association, upon fifteen (15) days' written notice (during which period the Unit Owner may perform the required act or work without further liability), may perform such required act or work and such cost shall be a specific assessment and a lien against the Unit and shall be collected as provided herein for the collection of assessments. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to Section 5.11(a) above, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

5.12. Limited Common Property. As provided in Section 1.11 hereof, some portions of the surface area of the Common Property may be reserved by Declarant for the benefit and use of the Owners of one or more particular Units.

(a) Boundaries of Limited Common Property. The Limited Common Property reserved for the benefit of the Owner of a particular Unit, if any, may, but shall not be required to be, depicted on the recorded subdivision plat(s) for the Community or other document(s) recorded in the real estate records of the Office of the Clerk of Superior Court of Fulton County, Georgia.

(b) Restriction Regarding Use. No Owner, Occupant, or any other Person may make any exterior change, alteration, or construction on or to any portion of the Limited Common Property appurtenant to a Unit without prior written approval in accordance with the provisions of Article 6 hereof or any applicable Architectural Guidelines.

(c) Easement for Limited Common Property. Declarant, as the owner of all of the property in the Community, hereby reserves for the benefit of the Units an easement of access, ingress, egress, use and enjoyment across that portion of the Common Property designated as Limited Common Property as provided herein. Such Limited Common Property may be used and enjoyed exclusively by the Owner of such benefited Unit in any manner and for any purpose permitted by this Declaration, including such purposes as general recreation and landscape uses; provided, however, each Owner shall comply with the use restrictions contained herein and rules adopted by the Board of Directors and obtain prior written approval in accordance with Article 6 hereof prior to installing any structures or improvements, except for those improvements, if any, which may be installed without approval as provided herein or in accordance with the Architectural Guidelines. The easement granted herein shall be appurtenant to and run with title to such benefited Unit for the benefit of the Owner of the Unit but shall not be sold, mortgaged, leased or otherwise granted or conveyed separate and apart from such benefited Unit.

(d) Rights Reserved for the Declarant. Notwithstanding anything to the contrary herein, Declarant shall have the right, without the vote of the members of the Association, but

with the consent of the Owner of any affected Unit, to designate any portion of the Common Property as Limited Common Property or reconfigure or relocate the Limited Common Property appurtenant to any Unit.

Article 6
Architectural Standards

6.1. General. No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavating, grading, filling, construction of impervious surfaces, building, exterior alteration of existing improvements, installing storm and screen doors, storm windows, window screens and fencing, changing the exterior color of any existing improvement and planting and removing landscaping materials), shall be commenced or placed upon any part of the Community unless, installed by the Declarant or an affiliate of the Declarant, approved in accordance with this Article, or otherwise expressly permitted under this Declaration. Any Owner may remodel, paint or redecorate the interior of a structure located on a Unit without approval hereunder. However, additions and/or modifications to the interior of porches, patios, decks, balconies and similar portions of a structure visible from outside of a Unit shall be subject to approval. No approval shall be required to rebuild in accordance with originally approved plans and specifications.

This Article shall not apply to the activities of the Declarant (except as provided above), or their affiliates or to improvements to the Common Property made by or on behalf of the Association. This Article may not be amended without the written consent of the Declarant until: (a) the Declarant no longer owns any property in the Community or that can be annexed to the Community as provided herein; and (b) each Unit has been improved with a dwelling for which a certificate of occupancy has been issued.

6.2. Guidelines and Procedures. Except as provided above or as specifically articulated in the Architectural Guidelines as defined in Section 6.3 hereof, no exterior construction, addition or alteration shall be made unless and until plans and specifications shall have been submitted in writing to and approved by the Declarant. Such plans and specifications shall be of sufficient detail to allow the Declarant to make its review and to the extent required by the Declarant shall show the nature, kind, shape, height, materials and location of the proposed structure or improvement. The Declarant shall be the sole arbiter of such plans and specifications and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. If the Declarant fails to approve or to disapprove submitted plans and specifications within sixty (60) days after the receipt of all required plans and specifications, the applicant may give the Declarant written notice of such failure to respond. If the Declarant has still not responded within ten (10) days after receipt of such written notice, such approval shall be deemed to have been given. If construction does not commence on a project for which plans have been approved within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the Declarant for reconsideration.

As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for the maintenance, repair, replacement and insurance to and on any improvement, structure, change, modification, addition or alteration. In the discretion of the Declarant, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Declarant and its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to determine whether or not these restrictive covenants have been or are being complied with and such Persons shall not be deemed guilty of trespass by reason of such entry; provided, however, nothing herein shall authorize entry into a residential dwelling located on a Unit without the consent of the Owner thereof.

6.3. Architectural Guidelines. The Declarant may adopt written architectural and landscaping guidelines ("Architectural Guidelines") and application and review procedures, which may provide for a review fee. The Declarant shall have sole and full authority to adopt, amend, repeal and expand, from time to time at its sole discretion and without notice, the Architectural Guidelines. In the event Declarant modifies, expands or repeals all or any portion of the Architectural Guidelines, said new Architectural Guidelines shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote and the Declarant. The Declarant shall make the Architectural Guidelines available to Owners and Occupants who seek to engage in construction upon all or any portion of the Community and such Owners and Occupants shall conduct their operations strictly in accordance therewith and with the provisions of this Article 6. The Declarant shall also provide, without cost, a copy of the Architectural Guidelines then in effect to any requesting Owner or Mortgagee.

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

with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

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

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

6.7. Enforcement. Any structure, improvement or landscaping improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant, Owners shall, at their own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant and its representatives and agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. The Declarant, the Association and their respective officers, directors, members, employees, representatives or agents shall not be held liable to any Person for exercising the rights granted by this Section, including, without limitation, claims for damages resulting from the removal of the nonconforming structure or improvement in accordance with the procedures herein. All costs, including, without limitation, reasonable attorney's fees actually incurred, may be assessed against the Unit as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Architectural Guidelines may be excluded by the Declarant from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws.

In the event of noncompliance with this Article, the Declarant or the Association, as applicable, may record in the appropriate land records a notice of violation hereunder naming the violating Owner. Declarant or the Association, as applicable, shall also have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article, including, without limitation, the right to levy and collect fines as provided herein and in Section 3.21 of the Bylaws.

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

After the termination or relinquishment of all or a portion of the rights of Declarant hereunder, the Board of Directors shall have all right, power and authority to review and approve all building and construction activity within the Community and this Article shall then be read and interpreted as if any reference to the authority of or action by the Declarant in this Article 6 were a reference to the authority of or action by the Board of Directors. The Board of Directors may, but shall have no obligation to, establish an architectural review committee ("ARC"), which shall then have such rights, powers and authority as may be granted to it by the Board of Directors. The Board of Directors may grant to the ARC all of its rights, powers and authorities hereunder, or may grant the ARC such limited rights as it deems appropriate in its sole discretion. In the event that all or any portion of such rights, powers and authorities are granted to an ARC, this Article or portions thereof, as appropriate, shall then be read and interpreted as if any reference to the authority of or action by the Declarant in this Article 6 were a reference to the ARC. Notwithstanding anything herein to the contrary, the Board of Directors shall have the sole right and authority to appoint and remove the members of the ARC.

Article 7

Use Restrictions and Rules

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

7.2. Residential Use. Each Unit shall be used for residential purposes exclusively. Leasing of a Unit for residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Unit, except that the Owner or Occupant residing at the Unit may conduct business activities within the residential dwelling located thereon so long as the business activity: (a) does not otherwise violate the provisions of the Declaration, Bylaws or rules and regulations of the Association; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Unit; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; (h) does not threaten the security or safety of other residents of the Community; (i) does not involve door-to-door solicitation within the Community; and (j) does not involve regular visitation of the Unit by employees who do not reside at the Unit, clients, customers, suppliers or other business invitees, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity. Notwithstanding the foregoing, nothing in this Section 7.2 shall be construed as prohibiting the Declarant from maintaining model homes, speculative housing, sales trailers or construction trailers within the Community.

7.3. Signs. No sign of any kind shall be erected or displayed within the Community without prior written approval under Article 6 hereof; provided, however, the following signs may be erected on any Unit without approval: (a) one professionally lettered for-sale sign or for-rent sign and security signs not larger than 16 square inches, all of which shall be consistent with the Community-Wide Standard; provided, however, the Board or its designee may require that the sign be displayed only from within the dwelling structure; (b) signs required by legal proceedings; and (c) such other signs as may be permitted under the Architectural Guidelines. Notwithstanding the foregoing, the Board, on behalf of the Association, and the Declarant shall have the right to erect and display reasonable and appropriate signs, including, without limitation, signs relating to the development, construction, marketing or sales of residential dwellings located on Units in the Community. The Board of Directors shall also have the right to adopt reasonable rules and regulations governing the display and placement of signs in the Community, including, without limitation, imposing reasonable time, place and manner restrictions. The Board or Declarant, as the case may be, may impose a reasonable fine determined by the Board in its sole discretion per day for the display of any sign which violates this provision and is not removed within twenty-four (24) hours after written demand is delivered to the Owner at that Unit. 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.

7.4. Vehicles; Parking.

(a) General. Vehicles shall be parked only in appropriate parking spaces serving the Unit or other designated parking areas established by the Board, if any. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking spaces serving the Unit" shall refer to the number of garage parking spaces and if, and only if, the Owners and Occupants of a Unit have more vehicles than the number of garage parking spaces, those excess vehicles which are an Owner or Occupant's primary means of transportation on a regular basis may be parked on the driveway located on such Unit; provided, however, no vehicle parked on a driveway shall encroach onto a sidewalk, street or any grassy or landscaped area. All parking shall be further subject to such reasonable rules and regulations as the Board may adopt from time to time.

(b) Guest Parking Spaces. Any and all designated parking spaces located on the Common Property shall be for temporary parking by guests, invitees and licensees of the Owners and Occupants of Units on a first come, first served basis ("Guest Parking Spaces"). Owners and Occupants of Units shall not be entitled to park vehicles on or otherwise utilize the Guest Parking Spaces, except with the prior written approval of the Board of Directors for use on a temporary basis. All parking in Guest Parking Spaces shall be subject to the provisions of this Section and such additional rules and regulations as the Board of Directors may adopt from time to time.

(c) Garages. All homes shall contain a garage; carports shall not be permitted. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. Garages shall be used primarily for the parking of vehicles and not for other purposes; provided, however, use of a garage for storage shall be permitted provided such storage does not prevent an Owner or Occupant from parking such Owner's or Occupant's vehicles in the garage. Garages shall not be converted to additional living space unless the same has been approved in accordance with Article 6 hereof.

(d) Disabled and Stored Vehicles. No vehicle may be left upon any portion of the Community, except in an enclosed garage or other area designated by the Board, if any, for a period of more than five (5) days if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle may be removed from the Community by the Board of Directors or the appropriate authority of Fulton County. No towed vehicle, boat, personal watercraft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go cart, golf cart, commercial vehicle, camper, bus or mobile home shall be regularly stored in the Community or temporarily kept in the Community, except if kept in an enclosed garage or other area designated by the Board, if any, for periods longer than forty-eight (48) hours (the temporary removal of such vehicle from the Community shall not be sufficient to establish compliance with the forty-eight (48) consecutive hour provision provided for herein). Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular

basis for transportation and the camper is stored out of public view upon removal. No eighteen wheel trucks or the cabs of such trucks or trucks with a load capacity in excess of three-quarters of a ton shall be parked, kept or stored within the Community except as may be reasonably necessary to provide service to or delivery within the Community or as otherwise permitted by the Board of Directors.

(e) Commercial Vehicles. The term "commercial vehicles" as used in this paragraph, shall include, without limitation, any vehicle which bears any indicia of commercial use, including, but not limited to, writing, logos, ladders, ladder racks, vehicles displaying signage of a commercial or business nature or vehicles which are not primarily used for the transportation of passengers, all as determined by the Board in its sole discretion. Commercial vehicles shall not be permitted in the Community, except if kept in an enclosed garage; provided however, construction, service, and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service to or make a delivery within the Community.

(f) Remedies of the Association for Noncompliance. If any vehicle is parked on any portion of the Common Property in violation of this Section or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity that will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within twelve (12) months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the Owner or user of the vehicle. If a vehicle is parked on a private street such that it is blocking another vehicle or access to a Unit, is obstructing the flow of traffic or otherwise creates a hazardous condition, no notice shall be required and the vehicle shall be towed immediately.

If a vehicle is towed in accordance with this Section, the Declarant, the Association and their respective affiliates, directors, officers, employees, representatives or agents, shall not be liable to any Person for any claim of damage resulting from the towing activity. The Board of Directors may exercise any and all remedies available for a violation of this Section, including, without limitation, the right to levy and collect fines against a non-complying Owner or Occupant, which remedies shall be in addition to not in lieu of its authority to remove the violating vehicle.

(g) Declarant Exemption. Notwithstanding anything to the contrary in this Section 7.4, the Declarant, and its respective agents, subcontractors and assigns shall have the right, during regular business hours, to park vehicles anywhere in the Community, including on the private streets and the Common Property, as needed in order to facilitate the construction, development, maintenance and build out of the Community.

(h) Traffic Regulations. All vehicular traffic on the private Community streets shall be subject to the provisions of state and local laws concerning the operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including imposing reasonable safety measures and speed limits. The Association shall be entitled to enforce the same by establishing such enforcement procedures as it deems appropriate, including levying and collecting fines for the violations thereof. In the event of a conflict between the provisions of state and local laws and such rules and regulations promulgated by the Association, the rules and regulations of the Association shall govern. Only drivers properly licensed to operate motor vehicles on the public roads within the State of Georgia may operate any type of motor vehicle within the Community. All vehicles of any kind and nature which are operated on the private Community streets shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all Owners and Occupants.

7.5. Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Unit, with the exception of dogs, cats or other usual and common household pets in a reasonable number as determined by the Board from time to time. No animals shall be kept, bred or maintained for any commercial purpose. No dog runs, invisible fences, runners or exterior pens for animals shall be erected or maintained in the Community unless approved in accordance with the provisions of Article 6 hereof. Dogs shall at all times when outside of a dwelling located on a Unit be kept on a leash or otherwise under the physical control of a responsible person. All Owners must control their animals at all times, whether or not such Owner is present, in a manner that will prevent any animal from: (a) making noise at objectionable sound levels for extended periods of time, whether continuously or intermittently; (b) endangering the health or safety of other Owners, their families, guests or invitees or creating fear in other Owners as to the safety of themselves, their families, guests or invitees; or (c) otherwise constituting a nuisance or inconvenience to the Owner(s) or Occupant(s) of any other Unit; all of the foregoing as determined by the Association in its sole discretion. The Association may require that an Owner remove any animal that presents an actual threat to the health or safety of residents and require abatement of any nuisance or unreasonable source of annoyance. In the event that the Owner fails to remove an animal as provided herein, the Association shall have the right to institute legal action to have the animal removed and all costs associated therewith, including, without limitation, reasonable attorneys' fees actually incurred, shall be a specific assessment against the Unit of such Owner.

All animals shall be registered, licensed and inoculated if and as required by law. Animal control authorities shall be permitted to enter the Community to patrol and remove unlicensed animals. Animal waste deposited in the Community must be removed by the owner of the animal or the person responsible for the animal. The Association may adopt reasonable rules and regulations designed to minimize damage and disturbance to other Owners and Occupants, including regulations requiring damage deposits, waste removal, leash controls and noise controls.

7.6. Nuisance. Each Owner and Occupant shall prevent the development of any unclean, unhealthy, unsightly or unkempt condition in the Community. No property within the

Community shall be used, in whole or in part, for the storage of any property or thing that will cause the Community or any Unit or Common Property to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property within the Community. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, screaming, shouting, excessively loud talking, fighting, raucous behavior, insobriety, playing loud music or television, use of any alarm, equipment, or device, mechanical or otherwise, which creates or produces excessively loud sounds or any vibrations, or any conduct which creates any noxious or offensive odors outside a home shall be permitted, located, used or placed on any Unit or Common Property. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board. Notwithstanding anything to the contrary herein, each Owner and Occupant acknowledges that the Declarant and its agents, subcontractors or employees may engage in construction activities on one or more Units in the Community and further agrees that such construction activities shall not be deemed a nuisance as provided herein.

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

7.8. Antennae. No exterior antenna, receiving dish or similar apparatus of any kind for receiving and/or transmitting audio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Unit, unless approved in accordance with the provisions of Article 6 hereof or otherwise permitted by the Architectural Guidelines; provided, however, no approval shall be necessary to install the following on a residential dwelling located on a Unit: (a) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services or antenna designed to receive or transmit fixed wireless signals via satellite, that are one meter or less in diameter; (b) antennas designed to receive video programming services via multi-point distribution services or antenna designed to receive or transmit fixed wireless signals other than via satellite that are one meter or less in diameter or diagonal measurement; or (c) antennas that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the residential dwelling located on a Unit unless such installation: (x) imposes unreasonable delay or prevents the use of the antennae; (y) unreasonably increases the cost of installation; or (z) an acceptable quality signal cannot otherwise be obtained.

7.9. Firearms. The discharge of firearms within the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, archery equipment and firearms of all types, regardless of size.

7.10. Fences. No fence or fencing type barrier of any kind, including, without limitation, an invisible fence, shall be placed, erected, allowed or maintained upon any Unit or Common Property unless approved in accordance with the provisions of Article 6 hereof. Notwithstanding the foregoing, Declarant and the Association may erect any type of fence on the Common Property or elsewhere within the Community as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for the health and safety of Owners and Occupants. Any fence erected or installed to enclose Limited Common Property by the Declarant or an Owner pursuant to Article 6 hereof shall contain at least one gate which provides access to the area enclosed by such fence in order for the Association and its agents to enter and maintain such area as provided in Article 5 hereof.

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

7.12. Lighting and Displays. Exterior lighting on any Unit visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Unit; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights for a period of thirty (30) days from the date of installation, subject to such reasonable rules and regulations as may be adopted by the Board in its sole discretion; (e) front house illumination of model homes; or (f) other lighting approved under and pursuant to Article 6 hereof or as otherwise permitted in the Architectural Guidelines. Religious or holiday symbols and decorations may be displayed on a Unit of the kinds normally displayed in single-family residential neighborhoods; provided, however, the Association may adopt time, place and manner restrictions with respect to said symbols and decorations visible from outside structures on the Unit, including limitations on appearance, style, size, and number.

7.13. Artificial Vegetation, Gardens, Play Equipment, Exterior Sculpture, Water Features and Similar Items. No artificial vegetation shall be permitted on the exterior of any property in the Community. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals or trampolines), exterior sculpture, fountains or water features may be erected on any Unit or in the Common Property without prior written approval in accordance with the provisions of Article 6 hereof or as may be otherwise permitted in the Architectural Guidelines.

7.14. Flags. Except for flags which may be installed by the Declarant, no flags may be displayed on any Unit without prior written approval in accordance with the provisions of Article 6 hereof or as may be otherwise permitted in the Architectural Guidelines established thereunder; provided, however no approval shall be required to display the flag of the United States of America and the current flag of the State of Georgia on a Unit in accordance with the provisions of the U.S. Flag Code (36 US Code 10) and usual and customary practice. The Board of Directors may promulgate reasonable rules and regulations with respect to the display of flags in

the Community, including, without limitation, regulating the size of flags that may be displayed and imposing reasonable time, place and manner restrictions pertaining to the display of the United States flag; provided, however, the Association shall not enact any rule or regulation which has the effect of prohibiting any Owner from displaying the flag of the United States of America on a Unit in the Community in contravention of the Freedom to Display the American Flag Act of 2005.

7.15. Conservation Equipment. No solar energy collector panels or attendant hardware or other conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure or otherwise screened from view and approved in accordance with the provisions of Article 6 hereof or as may be otherwise permitted as provided in the Architectural Guidelines.

7.16. Clotheslines. No exterior clotheslines of any type shall be permitted upon any Unit or in the Common Property.

7.17. Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose. The side of all window treatments which can be seen at any time from the outside of any structure located on a Unit must be white, off-white or such other acceptable color(s) as may be permitted in the Architectural Guidelines. Bed sheets, blankets, towels, black plastic, paper and similar type items shall not be used as window treatments. No window screens shall be installed on any window located on the front of the Unit unless approved under Article 6 hereof.

7.18. Storm and Screen Doors and Windows; Pet Doors. Owners shall not add storm and screen doors and storm windows on any Unit without prior approval in accordance with Article 6 hereof.

7.19. Drainage. Catch basins, retention ponds, detention ponds, drainage easement areas and related drainage facilities are for the purpose of controlling the natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner may obstruct or alter drainage flow after the location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article 6 hereof.

7.20. Garbage Cans, Firewood, Etc. All garbage cans, recycling bins, firewood and other similar items shall be stored within the garage serving the Unit or otherwise, to the extent reasonably practical, stored in a location so as to be concealed from the view of private streets and neighboring streets and property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, recycling and yard waste receptacles shall be placed at the curb no earlier than 5:00 p.m. the day before pick up and shall be removed within twenty-four (24) hours. Trash pick-up and/or recycling shall also be subject to such reasonable rules and regulations as the Board of Directors may adopt from time to time in its sole discretion.

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

7.22. Heating of Units in Colder Months. In order to prevent water pipes from breaking during colder months of the year resulting in damage to Units, increased common expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within all Units shall be maintained with the heating operating and at a minimum of fifty (50°) degrees Fahrenheit when the temperature is forecasted to or does reach thirty-two degrees (32°) degrees Fahrenheit or below. Owners shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. If the heating equipment is not working, the Owner shall: (a) immediately inform the Owners of the other Units of such equipment failure and of the time needed in order to repair the equipment; and (b) take reasonable steps to keep the Unit heated sufficiently to prevent the breakage of water pipes.

7.23. Garage Sales. No garage sale, carport sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Community without the prior written consent of the Board of Directors. If permitted, such activities shall be subject to all reasonable conditions that the Board may impose.

7.24. Leasing. Units may be leased for residential purposes. All leases shall be in writing. Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. Unless otherwise provided by the Board of Directors, all leases shall have a minimum term of at least twelve (12) months.

(a) Notice. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with the following information: (i) a copy of the fully executed lease agreement; (ii) the name of the lessee and all other Occupants of the Unit; (iii) the phone number of the lessee; (iv) the Owner's address and phone number other than at the Unit; and (v) other such information as the Board may reasonably require.

(b) General. The Owner must provide the lessee with copies of the Declaration, Bylaws, the rules and regulations of the Association and the lease shall provide that the Owner has made available to the lessee copies of the Declaration, Bylaws, the rules and regulations and Architectural Guidelines.

(c) Compliance with Declaration, Bylaws, Rules and Regulations and Architectural Guidelines. Each Owner covenants and agrees that any lease of a Unit 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 Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

Lessee shall abide by and comply with all provisions of the Declaration, Bylaws and rules and regulations and Architectural Guidelines adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure such compliance. Owner agrees to cause all Occupants of his or her Unit to comply with the Declaration, Bylaws and the rules and regulations and Architectural Guidelines adopted pursuant thereto and is responsible for all violations caused by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any violation of the Declaration, Bylaws and rules and regulations and Architectural Guidelines adopted pursuant thereto. In the event that the lessee or a person living with the lessee violates the Declaration, Bylaws or a rule or regulation or Architectural Guideline for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the provisions contained herein. If the fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit.

(i) Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including any Limited Common Property.

(ii) Liability for Assessments. If an Owner who is leasing his or her Unit fails to pay any annual, special or specific assessment or any other charge owed to the Association for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid annual, special and specific 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 of Director'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 of Director'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.

7.25. Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Unit or within the Common Property, and no trailer, camper, shack, tent, garage, barn or other structure may be used as a residence, either temporarily or permanently, without written approval in accordance with Article 6 hereof. However, this Section shall not be construed to prevent Declarant and its affiliates, agents, subcontractors or

assigns or those engaged in development, construction, marketing, property management or sales in the Community from using sheds, trailers or other temporary structures for any of the foregoing purposes. In addition, nothing in this Declaration shall be construed to prevent Declarant and its respective agents, employees, affiliates, subcontractors and assigns from developing, constructing, marketing, or maintaining model homes, speculative housing, sales trailers and construction trailers within the Community.

7.26. Decks, Patios, Porches, Balconies and Courtyards. No laundry, garments, towels or objects other than potted plants, grills, umbrellas and patio furniture, shall be placed on a deck, patio, porch, courtyard area or balcony, except as may be authorized by the Board of Directors. The use of grills and other like equipment, including, without limitation, smokers, shall only be permitted in accordance with applicable municipal, county and state ordinances and laws and fire codes, as well as the requirements of the Association's insurance policies. No outdoor grills are permitted indoors or inside any garage area. Grills shall be covered with grill covers when not in use. Grill and outdoor furniture covers shall be removable and of a type and color consistent with the Community-Wide Standard. Objects shall not be permitted to hang over or be attached to any deck, patio, porch, courtyard area or balcony or to otherwise protrude outside of the vertical plane formed by the exterior surface of any deck, patio, porch, courtyard area or balcony located on or appurtenant to a Unit. No deck, patio, balcony, courtyard area or porch shall be enclosed without prior approval in accordance with Article 6 of the Declaration.

7.27. Exterior Drapery. No exterior drapery shall be permitted unless approved in accordance with Article 6 hereof.

7.28. Exterior Colors. As provided in Article 5 hereof, exterior maintenance of Units, including, without limitation, painting, is the responsibility of the Association. Accordingly, Owners shall not paint or otherwise alter the exterior of any Unit or improvements constructed or maintained thereon without the prior written consent of the Board or its designee. The exterior of all improvements, including, without limitation, residences, constructed, erected, allowed or maintained upon any Unit must be painted or repainted in a color as approved by the Board or its designee. Notwithstanding the foregoing, any Owner who performs maintenance on or to a Unit which is the responsibility of the Association pursuant to this Declaration shall not be entitled to any reduction in the payment of any annual, special, specific assessment.

7.29. Impairment of Units and Easements. An Owner shall take no action that will impair the structural soundness or integrity of any Unit or impair any easement or other interest in real property, nor allow any condition to exist which will materially adversely affect the other Units or their Owners or Occupants.

7.30. Abandoned Personal Property. Personal property, other than vehicles as provided for in Section 7.4 hereof, is prohibited from being stored, kept, or allowed to remain unattended upon any portion of the Common Property, without prior written Board permission. If the Board determines that a violation exists, then, not less than twenty-four (24) hours after written notice is placed on the personal property and/or on the front door of the property owner's Unit, if known, the Board may remove the personal property and it shall have no obligation to return or

replace such property or reimburse the owner of the property. The notice shall include the name and telephone number of the Person which will remove the property and the name and telephone number of an individual to contact regarding the alleged violation.

The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed.

The Association and any director, officer, employee or agent thereof shall not be liable to any Person for any claim of damage resulting from the removal of any personal property in accordance with the procedures set forth herein. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

7.31. Storm Water Detention/Retention Ponds, Streams and Creeks. Except as herein provided, all storm water retention and/or detention ponds, streams and creeks within the Community shall be used primarily for aesthetic amenities and storm water drainage; no other use thereof, including, without limitation, swimming, ice skating, playing, or use of personal flotation devices, and other recreation, shall be permitted without the written consent of the Board of Directors. The Association and Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the storm water retention and/or detention ponds, streams or creeks in the Community. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse into any storm water retention and/or detention ponds, stream or creek in the Community. Applicable governmental agencies, Declarant and the Association shall have the sole right to control the water level of all bodies of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any storm water retention or detention ponds, stream or creek within the Community. Owners shall have no riparian or littoral rights with respect to the waters in any storm water detention/retention pond, stream, or creek in the Community and shall not be permitted to withdraw water from the same without the prior written consent of the Board of Directors.

7.32. Buffer Areas. The Community contains state waters buffers and undisturbed buffer areas, as more particularly shown on the recorded subdivision plat(s) for the Community. Land disturbing activities shall not be conducted within any state waters or buffer areas shown on the recorded subdivision plats for the Community, except with prior written approval under Article 6 hereof and in compliance with Georgia law, including without limitation, the Control of Erosion and Sedimentation Act, O.C.G.A. Section 12-7-1, *et seq.*, as amended from time to time and applicable Fulton County rules, regulations and zoning conditions.

7.33. Sky Terraces.

(a) Improvements. The Declarant may construct a top floor terrace ("Sky Terrace") on some or all of the Units. Any requested changes or improvements to a Sky Terrace by an Owner

must be consistent with the Sky Terrace and other improvements (collectively, the "Sky Terrace Improvements") initially constructed by the Declarant. Any requests for changes or improvements to a Sky Terrace may be disapproved under Article 6 hereof if the change or improvement would adversely affect the architectural appearance of the building. Penetration of the surfaces of a Sky Terrace's decking or the roof membrane by an Owner (other than the Declarant) is prohibited without prior written approval under Article 6 hereof. If permitted, such penetration shall be made at the sole cost and expense of the Owner and by a contractor approved by the Declarant, and after the rights of Declarant have terminated as provided herein, the Board of Directors. The permanent enclosure of a Sky Terrace into heated and cooled space within the boundaries of a Unit or screening of a Sky Terrace is prohibited.

(b) Objects. No objects (other than potted plants and permitted furniture as provided below) shall be placed on a Sky Terrace. No objects, including, without limitation, hot tubs, Jacuzzis, bicycles, recycling bins, laundry or flags shall be installed or placed on, affixed to, or hung from a Sky Terrace unless they are part of the Sky Terrace package offered by the Declarant or approved pursuant to Article 6 hereof. To reduce the risk of an object being blown off of a Sky Terrace, tables and chairs constructed of lightweight materials, such as plastic and vinyl, are prohibited from being placed on a Sky Terrace.

(c) Noise. Sound broadcasting or amplifying devices may be installed or operated on a Sky Terrace so long as the sounds is kept at audible levels which do not disturb other owners. In addition to the foregoing, televisions shall be permitted on a Sky Terrace so long as they are operated at usual and customary audio levels and covered when not in use. With respect to noise levels on a Sky Terrace, any inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board.

(d) Lights. The light from all external lighting located on a Sky Terrace shall be pointed down and shall be screened, shielded or shaded on all sides of the light source so as to minimize, to the extent practicable, the casting of unreasonably bright light onto the windows of any other Unit. Any external lighting on a Sky Terrace which is not installed by the Declarant shall be approved pursuant to Article 6 hereof.

(e) Awnings. Owners shall not change the color of any awning located on a Sky Terrace and in the event that an awning is replaced, the new awning shall be the same color as originally installed by the Declarant.

(f) Landscaping. The Declarant may, but shall not be required to, install planter boxes, pots or containers (collectively, "Containers") of any design or shape on a Sky Terrace. Any Container installed by the Declarant shall be deemed to have been approved under Article 6 hereof. Owners may permanently affix a Container to the Sky Terrace of a type and design approved in accordance with Article 6 or the Architectural Guidelines and affixed in a manner approved pursuant to Article 6. Owners shall have the right to place a reasonable number of potted plants on Sky Terraces, subject to the Architectural Guidelines, so long as such Owner maintains all plants in a neat condition, prunes any plants where applicable, removes all dead plants, and utilizes

appropriate catch trays to capture any overflow water. Owners shall be responsible for ensuring that no dead, diseased or dying plants, trees, shrubs or flowers (collectively, "Plants") are contained within any Container. All Plants in Containers shall be kept in a healthy condition and pruned so that they maintain an attractive shape and appearance, as determined in the sole discretion of the Board. Any Plants in Containers shall also not exceed such height as may be approved by the Declarant or the Board, as the case may be, or set forth in the Architectural Guidelines.

(g) Structural Support. Each Owner shall be responsible for ensuring that all Plants and Containers and any other permitted items on the Sky Terrace when combined with the other anticipated weight loads on a Sky Terrace do not place an excessive load on the structural components of the Sky Terrace or any other portion of the Unit. The Owner shall assume full responsibility for insuring that the combined weight of the Plants and Containers do not adversely affect the structural integrity of the Sky Terrace. If the Declarant, or the Board, as applicable, is concerned about an excessive structural load to be placed or existing on any Sky Terrace, it shall have the right, but not the obligation, to require the Owner of a Unit to provide a letter from a licensed Georgia engineer confirming that the anticipated structural loads are within the structural design tolerances for the Sky Terrace. Each Owner and Occupant acknowledges that Declarant has not made any representations regarding the loads that can be safely be placed on a Sky Terrace.

Notwithstanding anything to the contrary herein, it shall be the sole responsibility of the Owner or Occupant of a Unit to secure or remove all objects from a Sky Terrace during periods of high winds to prevent objects from being blown from a Sky Terrace and to refrain from engaging in any activity on a Sky Terrace that may cause objects to fall from the Sky Terrace.

Article 8

Insurance and Casualty Losses

8.1. Insurance Obtained by Association. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Property or required to be maintained by the Association under Section 5.1 and blanket insurance for all Units as provided in Section 8.7 hereof; provided, however, the Association's insurance shall not include an Owner's or Occupant's personal property (which shall be the sole responsibility of the Owner or Occupant, as applicable). Insurance obtained and maintained by the Association shall cover loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

The Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members for all damage to third party property or injury to persons caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least One Million and No/100 Dollars (\$1,000,000.00). If available at reasonable cost, as determined by the Board in its sole discretion, the Board shall also obtain directors' and officers' liability insurance.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant or its respective affiliates and to reimburse the Person so providing or arranging the insurance coverage for the cost thereof, and Declarant or its affiliates shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant or its affiliate, as the case may be, and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant or its affiliate in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if it has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant or its affiliates.

Premiums for all insurance shall be a common expense of the Association.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee, for the respective parties which may be benefited by such insurance, as their interests may appear. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in the State of Georgia.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if reasonably available, and all insurance policies shall be reviewed annually by one or more qualified Persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents and guests;

- (ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
- (iii) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any one or more individual Owners;
- (iv) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any defect or the conduct of any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;
- (v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
- (vi) that no policy may be canceled, subjected to nonrenewal, or substantially modified without at least thirty (30) days' prior written notice to the Association.

In addition to other insurance coverage required by this Section, the Board shall obtain workers compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law, and, if available at reasonable cost, as determined in the sole discretion of the Board, a fidelity bond or employees dishonesty coverage covering directors, officers, employees and other Persons handling or responsible for the Association's funds. The amount of fidelity or employees dishonesty coverage, if obtained, shall be determined in the directors' best business judgment and shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least ten (10) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the U.S. Department of Veterans Affairs or the U.S. Department of Housing and Urban Development.

8.2. Insurance Obtained by Unit Owners. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of a Unit and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall obtain and maintain the following: (i) all-risk casualty insurance on the Unit and all structures constructed thereon, which shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard; (ii) a liability policy covering damage or injury occurring on a Lot; and (iii) insurance covering an Owner's or Occupant's personal property. The policies required hereunder shall be in effect at all times.

8.3. Damage and Destruction.

(a) In General. Immediately after the damage or destruction by fire or other casualty to all or any portion of any structure or improvement covered by insurance written in the name of the Association, the Board of Directors shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessary to comply with applicable building codes.

(b) Repair and Construction. Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the Total Association Vote and the Declarant otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against the Owners of all of the Units subject to assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess funds shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then the property shall be maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition consistent with the Community-Wide Standard and this Declaration.

8.4. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who would be responsible for such loss in the absence of insurance. The Owner(s) shall be responsible for the full amount of the deductible under the Association's policy to the extent the same is not covered under such Owner's individual insurance policy. If the loss affects more than one Unit or a Unit and the Common Property, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total costs of repair, unless the insurance policy provides that the deductible will apply to each Unit separately. If an Owner fails to pay the deductible when required hereunder, the Association can pay the deductible and assess the cost to such Owner as a specific assessment.

Article 9
Easements

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

9.2. Easements for Use and Enjoyment. Every Owner shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the Occupants of the Unit in and to the Common Property which shall be appurtenant to and shall pass with the title to each Unit, subject to the following:

(a) the right of the Association to deactivate any card access system, gate code or other method used in connection with the Gate System which restricts vehicular and/or pedestrian access to the Community for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, rules and regulations or Architectural Guidelines;

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

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

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

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

(f) all encumbrances, zoning conditions, and other matters shown by the public records affecting title to the Common Property, including, without limitation any conservation easement in favor of Fulton County, Georgia regarding the Conservation Area as provided herein; and

(g) all rights of Unit Owners to use and enjoy any Limited Common Property as provided herein.

9.3. Easements for Encroachment and Overhang. There is hereby reserved to the Declarant for the benefit of each Unit a reciprocal appurtenant easement for encroachment and overhang between adjacent Units and between a Unit and adjacent Common Property, due to the original construction or the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than two (2) feet, as measured from any point on such common boundary; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association, other than the Declarant in the original construction of the Units.

9.4. Easement for Utilities - Association. There is hereby reserved to the Declarant and granted to the Association a blanket easement upon, across, above and under all property within the Community for access, ingress, egress, installing, altering, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television system, or security system which the Declarant or the Association might decide to have installed to serve the Community. Declarant, the Association or their respective designees may install, repair, replace and maintain or authorize the installation, repair, replacement and maintenance of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board shall have the right to grant such easement. Owners shall not remove, relocate or interfere in any way with any previously installed utility lines and facilities.

9.5. Easement for Utilities - Unit Owner. Declarant hereby establishes for the benefit of each Unit a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving such Unit and situated in, on or under any other Unit or the Common Property. Certain utility meters and facilities may be installed on the end of a building containing multiple Units and utility lines serving other Units may run across, over, under or through neighboring Units. Easements for all such utility lines are established by this Section 9.5 and Section 9.4 above. In the event that any Owner desires access to another Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owner of such other Unit(s) at least two (2) days in advance of the date that access is needed and attempt to agree on a convenient date and time for access by the Owner and the Owner's contractors.

Access in emergency situations shall be granted immediately upon request. Any Owner of a Unit to which access is needed under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Units, reasonable steps shall be taken to protect such Units and the property of the Owners and Occupants thereof, and damage shall be repaired by the Person causing the damage at its sole expense. Notwithstanding anything to the contrary herein, the Board of Directors, without a vote of the Owners, shall have the right, power and authority to grant permits, licenses, utility easements, and other easements under, through, or over the Units and/or the Common Property, as may be reasonably necessary for the proper maintenance and/or ongoing operation of the Community.

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

9.7. Easement for Maintenance - Association. Declarant hereby grants to the Association a perpetual easement across all Units and all other portions of the Community as may be reasonably necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Units, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole cost and expense. Except in an emergency situation, entry to the residential dwelling located on a Unit shall only be during reasonable hours and after notice to the Owner.

9.8. Easement for Maintenance - Units. Declarant hereby reserves for the benefit of each Unit reciprocal appurtenant easements between adjacent Units and an easement over adjacent Common Property, for the purpose of maintaining or repairing the improvements located on each Unit which easement shall extend to a distance of five (5) feet as measured from any point on the common boundary between the Units. The easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the Unit or Common Property over which this easement is exercised which arises out of such maintenance or repair work.

9.9. Easement for Drainage. There is hereby reserved by the Declarant and granted to the Association an easement upon, across, above and under all storm water drainage easement

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

9.10. Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, Architectural Guidelines, and amendments thereto, Declarant reserves an easement across the Community to maintain and carry on, upon such portion of the Community as it may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or any other property being developed by Declarant, including, but not limited to: (a) the right to place or authorize the placement of marketing and directional signs on Units or right-of-way(s) at street intersections within the Community; (b) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Unit; (c) the right to tie into any portion of the Community with streets, driveways, paths, parking areas and walkways; (d) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; (e) the right to grant easements over, under, in or on the Community, including without limitation the Units, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; (f) the right to convert Units (with the consent of the Owner thereof) to Common Property and/or streets; (g) the right to construct recreational facilities, utilities and other improvements on Common Property; (h) the right to carry on sales and promotional activities in the Community; (i) the right of Declarant, without the consent of any other Person, to revise and re-record the subdivision plat(s) of the Community, including, without limitation, creating and/or more specifically describing any Unit or Limited Common Property, changing any Unit or portion of a Unit to Common Property, changing any Common Property to a Unit or Limited Common Property, or creating a public or private street over all or any portion of a Unit or other property within the Community; provided, however, the boundary lines of any Unit not owned by Declarant shall not be changed without the written consent of the Owner(s) and Mortgagee(s)

of such Unit; and (j) and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant may use residences, offices or other buildings owned or leased by Declarant as model residences and sales offices. This Section shall not be amended without the written consent of Declarant until the rights of Declarant have terminated as provided in Section 10.5 hereof.

9.11. Easement for Private Streets and Sidewalks. Declarant hereby grants, conveys, declares, creates, imposes and establishes a perpetual, non-exclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across the private streets and sidewalks located within the Community. At such time as one or more subdivision plats for the property submitted to this Declaration are recorded in the real estate records of the Office of the Clerk of Superior Court of Fulton County, Georgia, any reference to the private streets shall then and thereafter mean a reference to the private streets as actually constructed and depicted on the recorded subdivision plat. The right-of-way easement herein granted shall permit joint usage of such easement by: (a) the Owners and Occupants; (b) the legal representatives, successors and assigns of the Owners; and (c) invitees and licensees of the Owners and Occupants. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any right-of-way easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional non-exclusive easements to third parties, over, under and across the easement area. Declarant hereby reserves for the benefit of itself and grants to the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across those utility easement areas and private Community streets for the installation, maintenance, and use of such private streets, sidewalks, grading for proper drainage of said private streets, and related activities and improvements.

Article 10 General Provisions

10.1. Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations, Architectural Guidelines and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plat(s) for the Community and in the deed to such Owner's Unit, if any. The Declarant and Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments provided, however, only one fine may be imposed for a single violation such that an Owner or Occupant may not be fined by the Declarant and the Board of Directors for the same violation; and provided, further, Declarant or the Board, as the case may be, may count each day a violation continues after notice thereof as a separate violation. In the event fines or other sanctions are imposed by Declarant hereunder, Declarant shall have any and all rights to collect such fines or sanctions (which fines shall be payable to the Association) and any related charges, including, without limitation, attorney's fees actually incurred and costs of collection, in the same manner as provided herein for the collection of assessments by the Association acting through the Board.

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

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

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

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

10.5. Termination of Rights of Declarant. The rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant no longer owns any property in the Community or that can be annexed to the Community as provided herein, and a certificate of occupancy has been issued for the residential dwelling located on each Unit in the Community; or (b) the date of recording by Declarant in the Fulton County, Georgia land records of a written instrument terminating all of Declarant's rights hereunder.

10.6. Amendment.

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

Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not: (i) materially adversely affect the substantive rights of any Owners hereunder to use and enjoy the Owner's Unit; (ii) adversely affect title to any Unit without the consent of the affected Owner; or (iii) adversely affect the rights of the holder of any security interest granted by Declarant encumbering any portion of the Community unless the holder thereof consents thereto in writing.

(b) By the Board. The Board of Directors, with the written consent of the Declarant, and without a vote of the members may amend this Declaration: (i) to elect to be governed by and thereafter comply with the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220 *et seq.*; (ii) to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (iii) to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (iv) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Units subject to this Declaration; or (v) to enable any governmental agency or private insurance company, including without limitation, the U.S. Department of Housing and Urban Development

and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Units subject to this Declaration; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner to use his or her Unit without the consent of the affected Owner.

(c) By the Members. In addition to the above, this Declaration may be amended upon the affirmative vote or written consent or any combination thereof of Owners of at least two-thirds (2/3) of the Units and the consent of Declarant.

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

Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in a court of competent jurisdiction in the county in which the Community is located within one (1) year of the recordation of such amendment.

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

10.8. 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.

10.9. 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.

10.10. No Merger. There shall be no merger of any of the covenants, conditions, restrictions or easements created or reserved hereby with the fee estate of Declarant, by reason of the fact that Declarant may own or hold the estate or interest both encumbered and benefited by

such covenants, conditions, restrictions or easements and no such merger shall occur unless and until Declarant, while owning all of the estate or interests shall execute a written statement or instrument affecting such merger and shall duly record the same.

10.11. Preparer. This Declaration was prepared by David N. Dorough, Jr., Dorough & Dorough, LLC, Attorneys at Law, 160 Clairemont Avenue, Suite 650, Decatur, Georgia 30030.

10.12. Notices. Except as otherwise specifically provided in such document(s), as the case may be, notices provided for in this Declaration, the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Unit and to the Declarant and to the Association at the address of their respective registered agent on file with the Secretary of State of the State of Georgia. Any Owner may designate a different address, including an electronic mail address, for notices to such Owner by giving written notice to the Association. Owners shall keep the Association advised of their current address and phone number(s) where they can be reached. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by Federal Express or other reputable commercial courier service, or issued electronically in accordance with Chapter 12 of Title 10 of the Official Code of Georgia Annotated, the "Uniform Electronic Transactions Act". The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

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

10.14. Security. ALL OWNERS, OCCUPANTS, GUESTS, LICENSEES, AND INVITEES, AS APPLICABLE, ACKNOWLEDGE THAT DECLARANT, THE ASSOCIATION AND ITS BOARD OF DIRECTORS DO NOT REPRESENT OR WARRANT THAT ANY SAFETY OR SECURITY MEASURES WILL BE IMPLEMENTED IN THE COMMUNITY OR, IF IMPLEMENTED, THAT SUCH SAFETY OR SECURITY MEASURES MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR THAT ANY SUCH SAFETY OR SECURITY MEASURES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THEY ARE DESIGNED. EACH OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT DECLARANT, THE ASSOCIATION AND THE BOARD OF DIRECTORS ARE NOT INSURERS OR PROVIDERS OF SAFETY OR SECURITY AND SHALL HAVE NO DUTY TO PROVIDE ANY SAFETY MEASURES OR SECURITY ON THE COMMON PROPERTY OR ANY OTHER PORTION OF THE COMMUNITY; AND THAT EACH OWNER, OCCUPANT, GUEST, LICENSEE, AND INVITEE ASSUMES ALL RISKS OF PERSONAL INJURY AND PROPERTY DAMAGE AND FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION AND THE BOARD OF DIRECTORS HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY

OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SAFETY OR SECURITY MEASURES IMPLEMENTED OR APPROVED.

10.15. Disclosures. Every Owner, by acceptance of a deed to a Unit, acknowledges that it will be subject to and bound by the terms and conditions of this Declaration, Bylaws, Architectural Guidelines and any rules and regulations adopted pursuant thereto.

Each Owner and Occupant also acknowledges the following:

- (a) that the Community is located adjacent to thoroughfares and may be affected by traffic and noise from time to time, and such thoroughfares may be improved or widened in the future;
- (b) that the views from an Owner's Unit may change over time due to among other things, additional development and the removal or addition of landscaping;
- (c) that 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;
- (d) that no representations are made regarding the schools that currently, or which may in the future, serve the Community;
- (e) that because in every development there are conditions that different purchasers may find objectionable, including but not limited to traffic congestion and related noise, each Owner acknowledges that there may be conditions outside of the property that such Owner finds objectionable and that it shall be the sole responsibility of such Owner to become acquainted with neighborhood conditions that could affect the Unit; and
- (f) that Declarant will be constructing portions of the Community and adjacent property and may engage in other construction activities related to other portions of the development and such adjacent property. Such construction activities may, from time to time, produce certain conditions within or in the vicinity of 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 in the Community. Notwithstanding the foregoing, each Owner agrees that such conditions in the Community resulting from construction activities shall not be deemed a nuisance or discomfort to Owner and shall not cause Declarant and its representatives or agents to be deemed in violation of any provision of this Declaration.

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

10.17. Agreements. Subject to the prior approval of Declarant, 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.

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

10.19. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote and the consent of the Declarant. This Section shall not apply to: (a) actions brought by the Association to enforce the provisions of this Declaration; (b) the imposition and collection of assessments as provided herein; (c) proceedings involving challenges to *ad valorem* taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for goods or services to which the Association is a party. This Section shall not be amended unless such amendment is made unilaterally by the Declarant as provided herein or is approved by the percentage votes necessary to institute proceedings as provided above.

10.20. Notice of Sale or Acquisition. Prior to the sale of a Unit, the Owner shall provide the Association with written notice of the name of the purchaser and such other information as the Board may reasonably require. Upon acquisition of title to a Unit, each new Owner shall provide the Association with written notice of the name and mailing address of the Owner and such other information as the Board may reasonably require.

10.21. Conflict. In the event of a conflict between the provisions of this Declaration and the provisions of Georgia law, then to the extent that the provisions of Georgia law cannot be waived by agreement, Georgia law shall control.

10.22. Books and Records.

(a) Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by his duly appointed representative and by holders, insurers or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a member or holder, insurer or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

10.23. Financial Statements. Financial statements for the Association shall be compiled annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's financial statements at the annual meeting, the Owners, by a Majority vote, may require that the financial statements of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all costs associated therewith, such holder shall be entitled to receive a copy of the audited financial statements of the Association within ninety (90) days of the date of the request.

IN WITNESS WHEREOF, the Declarant herein hereby executes this Declaration under seal, this _____ day of _____, 2018.

DECLARANT: **JWC MEMORIAL, LLC**, a Georgia limited liability company

By: JWC Interests, LLC, a Georgia limited liability company, its Manager

By: _____(SEAL)
Print Name: _____
Title: _____

Signed, sealed, and delivered in the presence of:

WITNESS

NOTARY PUBLIC

My Commission Expires: _____

[AFFIX NOTARY SEAL]

CONSENT OF LIEN HOLDER

STATE BANK AND TRUST COMPANY ("Lender"), as holder of that certain Deed to Secure Debt and Security Agreement, dated May 18, 2015 and recorded May 20, 2015 in Deed Book 54961, Page 76, *et seq.*, Fulton County, Georgia land records, as modified by that certain Modification of Promissory Note, Deed to Secure Debt and Security Agreement, dated June 15, 2017 and recorded June 21, 2017 in Deed Book 57644, Page 349, *et seq.*, aforesaid county records (hereinafter collectively referred to as "Deed to Secure Debt"), encumbering all or a portion of the property described in Exhibit "A" hereof, hereby consents to this Declaration of Protective Covenants, Conditions, Restrictions and Easements for Heritage on Memorial Townhomes and agrees that any foreclosure of the security title and interest under the Deed to Secure Debt or any other instrument that Lender holds shall be subject to the Declaration and any amendments thereto with respect to the property described in Exhibit "A".

This _____ day of _____, 2018.

LENDER: **STATE BANK AND TRUST COMPANY**

By: _____
Print Name: _____
Title: _____

Signed, sealed, and delivered
in the presence of:

[BANK SEAL]

WITNESS

NOTARY PUBLIC

My Commission Expires: _____

[AFFIX NOTARY SEAL]

EXHIBIT "A"
Legal Description

All that track or parcel of land lying and being in Land Lot 12 of the 14th District of Fulton County, City of Atlanta, Georgia and being more particularly described as follows:

BEGINNING at a ½ inch rebar found located at the intersection formed by the easterly right-of-way line of Gibson Street (having a 40 foot right-of-way) with the southerly right-of-way line of Memorial Drive, also known as Georgia Highway No. 154, (having a 50 foot right-of-way); thence running along the southerly right-of-way line of last said road South 88 degrees, 25 minutes and 17 seconds East for a distance of 251.19 feet to a ¾ inch rebar found; thence leaving the southerly right-of-way line of last said road and running South 01 degree, 48 minutes and 23 seconds west for a distance of 155.35 feet to a ½ inch rebar set; thence North 88 degrees, 25 minutes and 17 seconds West for a distance of 73.54 feet to a ½ inch rebar set; thence South 01 degree, 22 minutes and 58 seconds West for a distance of 101.31 feet to a ½ inch rebar set; thence North 88 degrees, 25 minutes and 17 seconds West for a distance of 168.50 feet to a ¾ hollow pipe found located on the easterly right-of-way line of said Gibson Street (having a 40 foot right-of-way); thence running along the easterly right-of-way line of last said road North 01 degree, 22 minutes and 58 seconds East for a distance of 256.66 feet to the ½ rebar found located at the POINT OF BEGINNING, containing 1.3043 acres (56,814 square feet) of land and improved property known as #985 Memorial Drive.

EXHIBIT "B"
Additional Property Which May Be Unilaterally
Submitted To This Declaration by Declarant

All that tract or parcel of land lying and being in Land Lots 12, 13, 20 & 21 of the 14th District, City of Atlanta, Fulton County, Georgia.

EXHIBIT "C"
Bylaws of Heritage on Memorial Homeowners Association, Inc.

[to be attached prior to recording]