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**MASTER DECLARATION  
OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
AVIGNON AT VININGS**

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TABLE OF CONTENTS

		<u>Page</u>
<b>Article 1</b>	<b>Definitions.....</b>	<b>1</b>
1.1	"Approved Builder" .....	1
1.2	"Articles of Incorporation" .....	1
1.3	"Association" .....	1
1.4	"Board of Directors" .....	1
1.5	"Bylaws" .....	2
1.6	"Common Property" .....	2
1.7	"Community" .....	2
1.8	"Community-Wide Standard" .....	2
1.9	Condominium Unit.....	2
1.10	"Declarant" .....	2
1.11	"Lot" .....	2
1.12	"Mortgage" .....	2
1.13	"Mortgagee" .....	2
1.14	"Occupant" .....	2
1.15	"Owner" .....	2
1.16	"Parcel" .....	3
1.17	"Parcel Assessment" .....	3
1.18	"Parcel Association" .....	3
1.19	"Parcel Declaration" .....	3
1.20	"Person" .....	3
1.21	"Supplementary Declaration" .....	3
1.22	"Total Association Vote" .....	3
1.23	"Townhome Unit" .....	3
1.24	"Voting Delegate" .....	3
<b>Article 2</b>	<b>Property Subject to this Declaration.....</b>	<b>4</b>
2.1	Property Hereby Subjected to This Declaration.....	4
2.2	Unilateral Annexation by Declarant.....	4
2.3	Additional Covenants, Restrictions and Easements.....	4
2.4	Other Annexation .....	4
2.5	Withdrawal of Property.....	4

<b>Article 3</b>	<b>Master Association Membership and Voting Rights.....</b>	<b>5</b>
3.1	Membership .....	5
3.2	Voting .....	5
3.3	Notice of Sale, Lease or Acquisition .....	5
<b>Article 4</b>	<b>Assessments .....</b>	<b>5</b>
4.1	Purpose of Assessments .....	5
4.2	Creation of the Lien and Personal Obligation for Assessments .....	5
4.3	General Assessments .....	6
4.4	Village Assessments .....	6
4.5	Special Assessments .....	7
4.6	Specific Assessments .....	7
4.7	Subordination of Liens to Mortgages .....	7
4.8	Remedies of the Association .....	7
4.9	Date of Commencement of Assessments .....	8
4.10	Budget Deficits During Declarant Control .....	8
4.11	Failure to Assess.....	8
4.12	Estoppel Letter .....	8
4.13	Initiation Fee.....	9
<b>Article 5</b>	<b>Maintenance; Common Property.....</b>	<b>9</b>
5.1	Association's Responsibility .....	9
5.2	Owner's Responsibility .....	9
5.3	Conveyance of Common Property by Declarant to Association; No Implied Rights.....	10
5.4	Partition .....	10
5.5	Condemnation.....	10
5.6	Liability Owners.....	10
<b>Article 6</b>	<b>Architectural Standards .....</b>	<b>11</b>
6.1	General .....	11
6.2	Guidelines and Procedures.....	11
6.3	Limitation of Liability.....	12
6.4	No Waiver .....	12
6.5	Variances .....	12
6.6	Enforcement.....	12
6.7	Architectural Review Committee.....	12
<b>Article 7</b>	<b>Use Restrictions and Rules .....</b>	<b>13</b>
7.1	General Rules and Regulations .....	13
7.2	Residential Use .....	13
7.3	Leasing.....	13
7.4	Signs .....	14

	<u>Page</u>
7.5	Vehicles; Parking ..... 14
7.6	Animals and Pets ..... 15
7.7	Nuisance ..... 15
7.8	Unightly or Unkempt Conditions..... 15
7.9	Antennas ..... 15
7.10	Tree Removal..... 15
7.11	Drainage..... 16
7.12	Sight Distance at Intersections ..... 16
7.13	Garbage Cans, Woodpiles, Etc..... 16
7.14	Subdivision of Lot..... 16
7.15	Firearms ..... 16
7.16	Fences ..... 16
7.17	Utility Lines..... 16
7.18	Air-Conditioning Units ..... 16
7.19	Lighting..... 17
7.20	Artificial Vegetation Exterior Sculpture and Similar Items..... 17
7.21	Energy Conservation Equipment ..... 17
7.22	Swimming Pools..... 17
7.23	Gardens, Play Equipment and Pools..... 17
7.24	Mailboxes..... 17
7.25	Clotheslines..... 17
7.26	Entry Features..... 17
7.27	Window Treatments ..... 17
7.28	Outbuildings and Similar Structures..... 17
7.29	Stream Buffer ..... 17
7.30.	Wetlands and Streams..... 18
7.31	Parcel Declaration..... 18
<b>Article 8</b>	<b>Insurance and Casualty Losses ..... 18</b>
8.1	Insurance on Common Property ..... 18
8.2	Individual Insurance ..... 18
8.3	Damage and Destruction -- Insured by Association ..... 19
8.4	Damage and Destruction – Insured by Owners..... 19
<b>Article 9</b>	<b>Mortgagee Provisions ..... 19</b>
9.1	Notices of Action ..... 19
9.2	Audit ..... 20
9.3	No Priority ..... 20
9.4	VA/HUD Approval ..... 20
<b>Article 10</b>	<b>Easements ..... 20</b>
10.1	General ..... 20
10.2	Easements for Use and Enjoyment ..... 20
10.3	Easements for Utilities ..... 21
10.4	Easement for Emergency Entry ..... 21
10.5	Easement for Maintenance – Association ..... 21
10.6	Easement for Maintenance – Owners ..... 22

	<u>Page</u>
10.7 Easement for Signage, Lighting, Landscaping and Similar Items .....	22
10.8 Easement for Entry Features and Streetscapes .....	22
10.9 Easement for Drainage .....	22
10.10 Easement During Construction and Sale Period .....	22
<b>Article 11 General Provisions .....</b>	<b>23</b>
11.1 Enforcement.....	23
11.2 Occupants Bound.....	23
11.3 Self-Help .....	23
11.4 Duration.....	24
11.5 Termination of Rights of Declarant and Approved Builder.....	24
11.6 Amendment.....	24
11.7 Challenges to Amendment.....	25
11.8 Gender and Grammar .....	25
11.9 Severability.....	25
11.10 Captions .....	25
11.11 No Merger .....	25
11.12 Preparer .....	25
11.13 Notices .....	25
11.14 Perpetuities .....	25
11.15 Indemnification .....	25
11.16 Agreements .....	26
11.17 Variances .....	26
11.18 Litigation.....	26

**MASTER DECLARATION  
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RESTRICTIONS AND EASEMENTS  
FOR**

**AVIGNON AT VININGS**

THIS DECLARATION is made on the date hereinafter set forth by **AVIGNON, 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, or if not the owner has the consent of 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 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-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. "Approved Builder" means a home builder or developer approved by Declarant for the construction of houses and condominiums on Lots, which home builder has been granted rights of Approved Builder hereunder by the Declarant. Declarant may grant rights of Approved Builder to one or several home builders or developers. Rights of Approved Builder hereunder shall apply only to the property **within a particular Parcel** which is acquired by the Approved Builder.

1.2. "Articles of Incorporation" means the Articles of Incorporation of Avignon at Vinings Owners Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.3. "Association" means Avignon at Vinings Owners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

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

1.5. "Bylaws" means the Bylaws of Avignon at Vinings Owners Association, Inc., attached to this Declaration as **Exhibit "C"** and incorporated herein by this reference as may be amended from time to time.

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

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

1.8. "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 of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

1.9. "Condominium Unit" means any condominium unit within the Community which constitutes or will constitute, after construction of improvements, a single dwelling site for a stacked flat condominium unit which is located in a multi-unit condominium building. The Condominium Units shall be subjected to a separate Declaration of Condominium. The ownership of each Condominium Unit shall include, and there shall automatically pass with the title to each Condominium Unit as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interests of an Owner in the Common Property, as herein provided.

1.10. "Declarant" means **Avignon, LLC**, a Georgia limited liability company, and its successors-in-title and assigns; provided that in a recorded instrument, such successor-in-title or assignee is designated as the Declarant hereunder by the holder of all of the rights of Declarant hereunder; and provided further, upon the effective date of the designation or a successor Declarant, all rights of the former Declarant in and to such status as Declarant hereunder shall cease, it being understood that there shall be only one holder of the rights of Declarant hereunder at any one point in time.

1.11. "Lot" means any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes a residential dwelling site, including a Condominium Unit and a Townhome Unit as herein defined, as shown on a subdivision plat or condominium plat recorded in the Office of the Clerk of Superior Court of Cobb County, Georgia. The ownership of each Lot shall include, and there shall automatically pass with the title to each Lot as an appurtenance thereto, membership in the Association and all rights and interest of an Owner in the Common Property.

1.12. "Mortgage" means any and all instruments used for the purpose of encumbering or conveying title to 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 Lot or other property located within the Community 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 Lot within the Community, but does not include any Mortgagee.

1.16. "Parcel" means three (3) separately developed and denominated residential areas within the Community which have been so designated on **Exhibit "A"** hereof, in the recorded subdivision or condominium plats for the Community, or in one or more Supplementary Declarations. The Community is expected to contain a single-family detached housing Parcel, a condominium Parcel built in the townhome style upon which Townhome Units are expected to be constructed, and a "stacked flat" condominium Parcel upon which Condominium Units are expected to be constructed. The Declarant shall have the right to designate separate Parcel status and change the Parcel status of any previously designated Parcel for any property in the Community. A Parcel may (but is not required to) have a separate incorporated mandatory membership Parcel association.

1.17. "Parcel Assessment" means assessments levied on all Lots in a Parcel to fund the estimated expenses expected to be incurred by the Association for the primary benefit of Lots within such Parcel, as more particularly described in Section 4.4 hereof.

1.18. "Parcel Association" means any condominium association, homeowners association, or other mandatory membership owners association having concurrent jurisdiction with the Master Association over any Parcel.

1.19. "Parcel Declaration" means any declaration of condominium, declaration of protective covenants, or similar instrument recorded in the Cobb County, Georgia land records, which subjects all or a portion of the land within such Parcel to covenants, restrictions, and easements in addition to those contained in this Declaration.

1.20. "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.

1.21. "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration, and/or imposes additional covenants, conditions, restrictions, or easements on the land described therein.

1.22. "Total Association Vote" means the votes attributable to the entire membership of the Association as of the record date for such action (including votes of the Declarant), whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. If, for example, and without limitation, a majority of the total Association Vote is required to approve a matter, such matter must receive more than half of the votes attributable to all existing members of the Association as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. As a further illustration, if a majority vote is required to approve a matter (and the term Total Association Vote is not used), such matter must receive more than half of the votes cast by the members present and entitled to vote on the matter.

1.23. "Townhome Unit" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site for a multi-level townhome style condominium unit which will be attached by one or more party walls to another townhome. The Townhome Units shall be subjected to a separate Declaration of Condominium. The ownership of each Townhome Unit shall include, and there shall automatically pass with the title to each Townhome 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 the Common Property, as herein provided.

1.24. "Voting Delegate" means the representative selected by the Parcel Association to be responsible for casting all votes attributable to property subject to the jurisdiction of such Parcel



Association on all Association matters requiring a vote of the Owners, except matters, if any, which the Declaration, the Bylaws, the Articles of Incorporation, or Georgia law specifically requires that votes be cast by the Owners. Unless otherwise specified by the Parcel Association, the Voting Delegate for each Parcel shall be the president of the Parcel Association, and the alternate Voting Delegate shall be the treasurer and secretary, in that order.

## **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 until ten (10) years after the recording of this Declaration, 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 Office of the Clerk of Superior Court of Cobb County, Georgia, a Supplementary Declaration describing the property being subjected. Any annexation shall be effective upon the filing for record of a Supplementary Declaration executed by the Declarant, unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed, and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land, nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

2.3. Additional Covenants, Restrictions and Easements. The Declarant may subject any portion of the property submitted to this Declaration initially, or by Supplementary Declaration, to additional covenants, restrictions and easements, and/or modify the applicability of the covenants, restrictions and easements contained in this Declarations as to such property.

2.4. Other Annexation. 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 Lots, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association, by filing for record in the Office of the Clerk of Superior Court of Cobb County, Georgia, 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, unless a later effective date is provided therein.

2.5. Withdrawal of Property. Declarant reserves the right to amend this Declaration, so long as it has a right to annex additional property pursuant to this Article, for the purpose of removing any portion of the Community then owned by Declarant or the Association from the coverage of this Declaration, 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.

**Article 3.**  
**Master Association Membership and Voting Rights**

3.1. Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot (including a detached single-family residential lot, Condominium Unit and Townhome Unit) subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Mortgagees, and the conveyance of a security interest shall not terminate the Owner's membership. No Owner; whether one or more Persons, shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the designee of a member, but in no event shall more than one office be held for each Lot owned. 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 the officers and directors appointed by the Declarant.

3.2. If any Parcel has a Parcel Association, then for purposes of effecting ways and means of smooth and efficient communication between Declaration or the Association and the Owners, Declarant or the Association shall be entitled to communicate and deal with the Parcel Association in all matters affecting the Owners of Lots within such Parcel. The vote attributable to each Unit shall be exercised by the Voting Delegate representing the Parcel of which the Lot is a part. The Voting Delegate may cast all such votes as he or she deems appropriate, and no polling of the Owners or split voting shall be required. In any situation where an Owner is entitled personally to exercise their vote, and more than one (1) Person holds an ownership interest in such Lot, the vote for such Lot shall be exercised as those Owners determine among themselves. In the event of a dispute, the vote shall be suspended if more than one (1) Person seeks to exercise it.

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

3.4. Notice of Sale, Lease or Acquisition. Prior to the sale or lease of a Lot, the Owner shall provide the Association with written notice of the name of the purchaser or lessee, as the case may be, and such other information as the Board may reasonably require. Upon acquisition of a Lot, 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.

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

4.2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance or 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) Parcel assessments, if applicable; (c) special assessments; and (d) specific assessments. All such assessments, together with late

charges, interest (at a rate set by the Board of Directors from time to time, 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 shall be a continuing lien in favor of the Association on the Lot against which each assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien, and no further recordation of any claim of lien shall be required. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration but not limitation, abandonment of the property. 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. General Assessments. 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 general assessment to be levied against each Lot shall be an equal amount for all Lots. The Board shall cause the budget and the assessments to be levied for the year to be delivered to each Owner at least thirty (30) days prior to the due date of any 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. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined as provided herein, the budget in effect shall continue. General assessments 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 delinquencies. 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, 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, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance, expenses and liabilities incurred as provided herein, and in the Articles of Incorporation and Bylaws for indemnification of officers and directors, and in connection with the enforcement of rights and duties of the Association against Owners and others. It is anticipated that such expenses shall include (i) costs of operating and maintaining the entrance guardhouse and Community clubhouse, pool, and athletic facilities; (ii) common area utilities, including, without limitation, water, power, and gas and cable television expenses; (iii) security expenses; (iv) costs of maintaining common signage; (v) maintenance of the land at the entrance of the Community currently owned by Cobb County along Paces Ferry Road; (vi) maintenance of common areas, including drainage ponds and facilities; (vii) concierge services available to all Owners; and (viii) garbage collection services, if a common garbage collection service is engaged by the Board of Directors. Owners shall be required to utilize such a common garbage collection service if mandated by the Board of Directors.

4.4. Parcel Assessments. The Association may levy assessments against the property in a particular Parcel to fund actual and estimated expenses incurred by the Association for the primary benefit of property within such Parcel, including without limitation, maintenance required to be performed by the Association with respect to property within such Parcel. Parcel assessments shall be levied as

specifically budgeted from time to time by the Board of Directors pursuant to this Declaration. In addition, the Board shall levy a Parcel assessment upon the request of the Owners holding two-thirds (2/3) of the total Association Vote applicable to Lots within a Parcel and the consent of the Declarant.

It shall be the duty of the Board of Directors to exercise its reasonable judgment to determine whether any particular actual or estimated expenses incurred by the Association (i) are for the primary benefit of Lots within a particular Parcel (for example, maintenance required to be performed by the Association with respect to property within such Parcel); or (ii) are more appropriately assessed against all of the Lots pro rata, based on the total votes attributable to such Lots, because the primary benefit of such expenses is not for the Lots within a particular Parcel. All expenses which are so determined by the Board of Directors as being for the primary benefit of Lots within a particular Parcel shall be raised through a Parcel Assessment against the Lots in such particular Parcel.

4.5. Special Assessments. The Association may levy a special assessment if approved by two-thirds (2/3) of the Total Association Vote and the Declarant. 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 it shall deem appropriate in its discretion. 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. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. 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 Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; and (b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

4.7. Subordination of Liens to Mortgages. The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage if, but only if, all assessments and charges with respect to such Lot authorized herein, having a due date on or prior to the date of the Mortgage as filed of record, have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder, having a due date subsequent to the date such Mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such Mortgage, or the sale or transfer of the property pursuant to any proceeding in lieu of foreclosure, or the sale or transfer of the property pursuant to a sale under power contained in 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 property from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such property to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of any personal obligation, or relieve such property or the then Owner from liability for any assessment authorized hereunder becoming 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 as the Board may from time to time determine. 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 notice of its claim of lien with the Office of the Clerk of Superior Court of Cobb County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments contained in this Declaration. Each Owner, by acceptance or 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 any property within the Community at any foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property and recreational facilities maintained by the Association, and the right to receive and enjoy such services and other benefits as may then be provided by the Association. Any such suspension shall not affect such Owner's obligation to pay assessments coming due during the period of such suspension, and shall not affect the permanent lien on such property in favor of the Association.

4.9. Date of Commencement of Assessments. Assessments shall commence in general when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a particular Lot on the date that the Lot is first occupied for residential purposes. A Lot shall be occupied for residential purposes when it has been improved with a dwelling 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.

4.10. Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant, or an Approved Builder with the consent of the Declarant, may (a) advance funds 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, Parcel, 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 the Approved Builder, as applicable); 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. No Mortgage secured by the Common Property or any of the 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 for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

4.12. Estoppel Letter. The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, as established by the Board, certify to the amount of any unpaid assessments constituting a lien on a specified Lot. 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 Lot shall be binding upon the Association.

4.13. Initiation Fee. Upon the first sale of each and every Lot after it has been improved with a residence for which a certificate of occupancy has been issued, an initiation fee shall be collected from the purchaser at the closing of such sale for the benefit of the Association. A different amount of initiation fee may be established for each Parcel within the Community. The initiation fee shall constitute a specific assessment against the Lot, shall be in addition to, not in lieu of, the annual general assessment, and shall not be considered an advance payment of such assessment. The initiation fee may be used by the Association for any purpose, 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.

## **Article 5. Maintenance; Common Property**

5.1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. The Association shall also maintain (whether or not constituting Common Property) (a) all Community entry features, including the entry guardhouse and entry area landscaping (including land currently owned by Cobb County along Paces Ferry Road), and any irrigation system, and the expenses for water and electricity, if any, provided to all such entry features; (b) all storm water detention/retention ponds and storm water drainage facilities serving the Community, if and to the extent such facilities are not maintained by the owner of such facilities, the owners of nearby property served by such facilities, or a government body; (c) all Community greenbelt and open spaces; (d) all retaining walls constructed by Declarant in the Community; and (e) all Community recreational facilities (including the Community clubhouse, pool, and athletic facilities). In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community, and to enter into easements and covenant to share costs agreements regarding such property, where the Board has determined that such action would benefit the Owners. In the event that the Association determines that the need for maintenance, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement, and all costs thereof not paid for by insurance shall be assessed against the Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Community-Wide Standard. Any common irrigation system installed by the Declarant or the Association shall be Common Property, operated, maintained, repaired and replaced by the Association. The deed of conveyance of any Lot shall not include any right, title or interest in such irrigation system, if any.

5.2. Owner's Responsibility. Except for maintenance performed on a Lot by the Association or by a Parcel Association pursuant to Section 5.1 or Article 8, or pursuant to a Parcel Declaration, all maintenance of the Lot, and all structures and other improvements thereon, shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; keeping improvements and exterior lighting in good repair and working order; keeping driveways in good repair; complying with all governmental health and police requirements; and repairing and painting (or other appropriate external care) of improvements located on a Lot. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement; or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the

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

5.3. 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 maintained by the Association for the benefit of its Owners. The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept on behalf of the Association any such conveyance to the Association, and to execute on behalf of the Association any and all documents, including, without limitation, deeds and transfer tax declaration forms, necessary or convenient to effectuate and document any such conveyance to the Association. 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 or condominium 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 or the owner of such property 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 Cobb County, Georgia.

5.4. 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 all Owners of all portions of the property located within the Community, and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Lots located within the Community.

5.5. Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken 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 consent of the Declarant. The provisions of this Declaration applicable to 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.

5.6. Liability of Owners. Occupants and their guests shall use the Common Property, Community recreational facilities, green space, pedestrian paths and walking trails maintained by the Association at their own risk, and shall assume sole responsibility for their personal belongings used or stored there. The Association, the Declarant and their respective officers, directors, employees, representatives and agents, shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on any of the foregoing property. The Association 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 (c) caused by 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, becoming out of repair. Nor shall the Association be liable to any Owner or Occupant for loss or damage, by theft or otherwise, of any property of such Owner or Occupant.

## **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, excavation, grading, filling, construction of impervious surface, building, exterior alteration of existing improvements, change in the exterior color of any existing improvement, and planting and removal of 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 structures on the Lot without approval hereunder. However, modifications to the interior of porches, decks, patios and similar portions or a structure visible from outside the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of the Declarant, affiliates of the Declarant, nor to improvements to the Common Property by or on behalf of the Association. Any Approved Builder may submit its standard plans for approval by Declarant hereunder, which approval will not be unreasonably withheld, and thereafter no further approval shall be required under this Article for such Approved Builder to construct improvements on Lots consistent with the approved standard plans. This Article may not be amended without the written consent of the Declarant until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Lot has been improved with a dwelling for which a certificate of occupancy has been issued.

6.2. Guidelines and Procedures. Except as provided above, 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 improvement. The Declarant may adopt written design and development guidelines, and application and review procedures, which may provide for a review fee. The Declarant shall have sole and full authority to prepare and to amend, from time to time at its sole discretion and without notice, the architectural guidelines. The Declarant shall make the architectural guidelines available to Owners and builders who seek to engage in construction upon all or any portion of the Community, and such Owners and builders shall conduct their operations strictly in accordance therewith. If the Declarant fails to approve or to disapprove submitted plans and specifications within thirty (30) days after receipt of all required plans and specifications, such approval shall be deemed to have been given. 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 maintenance, repair, replacement and insurance to and on any improvement, 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 each Owner and such Owner's successors-in-interest. The Declarant shall be the sole arbiter of such plans 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. 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 inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such entry. 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.

6.3. Limitation of Liability. Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications, the Declarant assumes no liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, nor the officers, directors, members, employees and agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence or 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 the officers, directors, members, employees and agents of any of them 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.

6.4. 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 approval or consent of the Declarant, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, or drawings, or matters whatever subsequently or additionally submitted for approval or consent.

6.5. 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, and would not be inconsistent with the overall scheme of development for the Community. No variance shall (a) be effective unless in writing, (b) be inconsistent with the overall scheme of development for the Community, or (c) prevent the Declarant from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.6. Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant, an Owner shall, at its 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 agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Lot as a specific assessment. Any contractor; subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the architectural guidelines may be excluded by the Declarant from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws. In such event, neither the Declarant, the Association, nor the officers, directors, members, employees and agents of any of them, shall be held liable to any Person for exercising the rights granted by this paragraph. In addition to any other remedies available to the Declarant, in the event of noncompliance with this Article, the Declarant may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the Declarant shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

6.7. Architectural Review Committee. Until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Lot 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. There shall be no surrender of this right except in a written instrument in recordable form executed by Declarant and recorded in the Office of the Clerk of Superior Court of Cobb County, Georgia. Upon expiration or earlier surrender in writing of all or a portion of such right and authority, the Board of Directors shall appoint an Architectural Review Committee of the Association ("ARC"), which shall then have such jurisdiction over architectural control under this Article as may have been relinquished by the Declarant. The Declarant may, in its sole discretion, relinquish architectural control as to certain types of improvements or modifications while retaining control over all other building and construction in the Community. For example and without limitation, the Declarant may relinquish control over modifications of existing structures to the ARC or to Parcel Associations, while retaining all authority to review and approve new home construction in the Community. Any right, power or authority of the Declarant which may be relinquished prior to the termination of the rights of Declarant hereunder shall be by written recorded instrument only, and no such right, power or authority shall be relinquished by implication or otherwise. The establishment of an advisory ARC shall not be deemed to be a relinquishment by Declarant of any of its right, power and authority hereunder. After the termination of all rights of Declarant hereunder, the ARC shall have all right, power and authority to review and approve building and construction activity within the Community hereunder, and this Article shall then be read and interpreted as if any reference to the Declarant in this Article 6 were a reference to the ARC.

#### **Article 7. Use Restrictions and Rules**

7.1. General Rules and Regulations. Each Lot, including each Condominium Unit and Townhome Unit, in the Community shall be subject to the use restrictions and rules set forth in this Article. The Board of Directors may, from time to time, with the consent of Declarant and without a vote of the Owners, promulgate, modify or delete 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 consent of Declarant.

7.2. Residential Use. Each Lot shall be used for single-family residential purposes exclusively. Leasing of a Lot for single-family 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 Lot, except that the Owner or Occupant in residence at the Lot may conduct business activities within the dwelling unit so long as the business activity (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent from the exterior of the Lot; (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 premiums 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; and (h) does not threaten the security or safety of other residents of the Community; 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.

7.3. Leasing. Lots may be leased for single-family residential purposes. Unless otherwise provided by the Board of Directors, all leases shall have a minimum term of at least twelve (12) months.

All leases shall require, without limitation, that the Occupants acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions and rules and regulations of the Association, and obligate the Occupants to comply with the foregoing.

7.4. Signs. No sign of any kind shall be erected within the Community without the prior written consent of (a) the Declarant or, after the termination of the rights of Declarant hereunder, the Board of Directors; and (b) the Architectural Review Committee, if any. Notwithstanding the foregoing, the Board, the Declarant and Approved Builder shall have the right to erect reasonable and appropriate signs. "For sale" signs and security signs not larger than 18-inches by 18-inches, and any signs required by legal proceedings, may be erected upon any Lot. 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. The Board may impose a fine of One-Hundred Fifty and No/100 Dollars (\$150.00) per day for display of any sign in violation of this provision which is not removed within twenty-four (24) hours after written demand is delivered to the Owner of the Lot.

7.5. Vehicles; Parking. Vehicles shall be parked only in appropriate parking spaces serving the Lot or other designated areas, if any. No on-street parking, other than in connection with special events as approved by the Board of Directors, shall be permitted within the Community. All parking shall be subject to such rules and regulations as the Board may adopt. 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. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is 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. Any towed vehicle, boat, personal watercraft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go-cart, golf cart, commercial truck, camper, bus or mobile home stored in the Community or temporarily kept in the Community, except if kept in a garage, for periods longer than twenty-four (24) hours may be removed from the Community by the Board of Directors. 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 during the time reasonably necessary to provide service or delivery within the Community. No Owner, or any member of the Owner's family residing with the Owner, or tenants residing on the Lot shall park any vehicle in any Guest Parking Area (as defined in Section 8.5(e) hereof).

If any vehicle is parked on any portion of the Community 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 six (6) 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 in a fire lane, is blocking another vehicle, is obstructing the flow of traffic, is parked on any grassy area, is parked in any alley, or otherwise creates a hazardous condition, no notice shall be required, and the Board or agent of the Association may have the vehicle towed immediately at the Owner's sole expense. If a vehicle is towed in accordance with this subparagraph, neither the Association, nor any officer or agent of the Association, shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions rather than exercise its authority to tow.

7.6. Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept, or permitted on the exterior of any Lot, with the exception of dogs, cats or other usual and common household pets. All pets shall be registered, licensed and inoculated if and as required by law. No pets shall be kept, bred or maintained for any commercial purpose. No exterior pens for household pets shall be erected or maintained on any Lot unless approved in accordance with the provisions of Article 6 hereof. Dogs shall, at all times when outside the Lot, be kept on a leash or otherwise under control at all times. Animal control authorities shall be permitted to enter the Community to patrol and remove unlicensed pets. An Owner shall not allow any animal waste to remain on the Community property maintained by the Association. The Association may require the removal of 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.

7.7. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on a Lot. No Lot shall be used for the storage of anything that will cause such Lot to appear to be in an unclean or untidy condition, or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the 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 speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot. Any noise that can be heard inside a neighboring house with the windows and doors closed will be considered too loud and in violation of this provision. This provision shall not apply to any Lot(s) owned by the Declarant or an Approved Builder.

7.8. 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.

7.9. Antennas. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Lot, unless approved in accordance with the provisions of Article 6 hereof; provided, however; no such approval shall be necessary to install (a) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services, that are one meter or less in diameter; (b) antennas designed to receive video programming services via multi-point distribution services 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 dwelling.

7.10. Tree Removal. No trees that are more than four (4) inches in diameter at a point twelve (12) inches above the ground, and no ornamental or flowering trees, including, but not limited to, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter, shall be removed from a Lot without prior approval pursuant to Article 6 hereof. Owners shall also comply with any local ordinance and zoning condition applicable to tree removal. In the event of a conflict between the provisions of this Section and any local ordinance or zoning condition, the more restrictive provision shall govern. This provision shall not apply to the removal of trees by the Declarant, the Association or by an Approved Builder in connection with construction approved under Article 6 hereof.

7.11. Drainage. Catch basins, retention ponds, detention ponds, drainage swales and drainage easement areas are for the purpose of controlling the natural flow of water only. Owners shall not obstruct or alter the drainage flow across or from their Lot after 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.

7.12. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or other planting or thing shall be placed or permitted to remain where, in the opinion of the Board, it would create an unsafe condition.

7.13. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, air conditioning units, heat pumps, swimming pool pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the Community as needed for efficient construction, and to allow Approved Builders to bury rocks and trees removed from a building site on such building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except by the Declarant or an Approved Builder.

7.14. Subdivision of Lot. No Lot 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 or condominium plat of any Lot(s) with the consent of the Owner of the effected Lot(s), and to approve the revision and re-recording of any plat of any Lot(s) owned by any builder or developer; including, but not limited to, changing any Lot to Common Property or creating a public or private street over any Lot or property that was formerly a Lot, without the consent of any Person, other than the Owner(s) of such property.

7.15. Firearms. The use or discharge of firearms in the Community is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns and other guns of any type, regardless of size.

7.16. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any part of the Common Property except as may be installed by the Association, or upon any Lot, without prior written approval in accordance with the provisions of Article 6 hereof. Guidelines detailing acceptable fence styles or specifications may be issued pursuant to Article 6, but in no event may a chain link or hashed wire fence be approved; provided, however, the 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 health and safety of Owners and Occupants. In the event that the Owner of a Lot obtains approval to construct a fence in accordance with this Section, the Association shall no longer be obligated to maintain landscaping in enclosed portions of the Lot, and such landscaping shall be the sole responsibility of the Owner.

7.17. Utility Lines. Except as may be permitted under and pursuant to Article 6 hereof, no overhead utility lines, including lines for cable television, shall be installed within the Community, except for temporary lines as required during construction, and lines installed by or at the request of the Declarant or an Approved Builder.

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

7.19. Lighting. Exterior lighting on any Lot visible from the street shall not be permitted, except for (a) approved lighting as originally installed on a Lot; (b) one (1) decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; or (e) other lighting approved under and pursuant to Article 6 hereof.

7.20. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any Lot. Exterior sculptures, fountains, flags or similar items must be approved under and pursuant to Article 6 hereof.

7.21. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed, unless as an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Declarant, in accordance with the provisions of Article 6 hereof.

7.22. Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Lot without prior written approval in accordance with the provisions of Article 6 hereof, and in no event shall any above-ground swimming pool be permitted.

7.23. Gardens, Play Equipment and Pools. No vegetable or flower garden, hammock, statuary, play equipment (including, without limitation, basketball goals) or garden pool shall be erected on any Lot without prior written approval in accordance with the provisions of Article 6 hereof.

7.24. Mailboxes. All mailboxes serving Lots shall be approved in accordance with the provisions of Article 6 hereof. Identical replacement mailboxes may be installed without further approval; but no modification to or change in mailboxes may be made unless approved in accordance with the provisions of Article 6 hereof.

7.25. Clotheslines. No exterior clotheslines of any type shall be permitted upon any Lot.

7.26. Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant or Approved Builder on any Lot, or any part of any easement area associated therewith, without prior approval in accordance with the provisions of Article 6 hereof.

7.27. Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades, or 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 Lot must be white or off white.

7.28. Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot, 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 the provisions of Article 6 hereof. However, this Section shall not be construed to prevent Declarant or an Approved Builder and 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 or any builder from developing, constructing, marketing, or maintaining model homes or speculative housing within the Community.

7.29. Stream Buffer. Land-disturbing activities shall not be conducted within seventy-five (75) feet of the banks of any stream within the Community, as measured from the point where vegetation has been wrested by normal stream flow, except with prior written approval under Article 6 hereof and compliance with Georgia law, including without limitation, the Control of Erosion and Sedimentation Act, O.C.G.A. § 12-7-1, *et seq.*, as amended from time to time.

7.30. Wetlands and Streams. Except as herein provided, all wetlands and streams with the Community shall be aesthetic amenities used for storm water drainage only. The Association and/or 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 wetlands or streams within the Community. For this purpose, "wetlands" means any area labeled as wetlands on a recorded plat for the Community or otherwise designated as wetlands by the Declarant or the Board of Directors. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes, or other refuse in any wetlands or streams within the Community. Applicable governmental agencies and the Declarant and the Association shall have the sole right to control the water level of any body 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 wetlands and streams within the Community. Owners shall have no riparian or littoral rights with respect to the waters in any stream within the Community, and shall not be permitted to withdraw water from any stream as may exist in the Community without the prior written consent of the Board of Directors.

7.31. Parcel Declaration. In addition to this Declaration, every Parcel within the Community which is submitted to the Georgia Condominium Act, as amended, or the Georgia Property Owners' Association Act, as amended, or is subdivided into Lots intended for independent ownership and occupancy, single-family detached homes, or any other multi-owner regime, shall, prior to the conveyance of the first Lot therein to a Person other than a builder or developer holding title for purposes of development and resale, be subject to a Parcel Declaration which shall contain covenants and restrictions regulating signage, vehicles, animals, nuisances, unsightly conditions, tree removal and architectural standards within the Parcel. No such Parcel Declaration shall be recorded without the prior review and approval of Declarant, which approval shall not be unreasonably withheld.

## **Article 8. Insurance and Casualty Losses**

8.1. Insurance on Common Property. The Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Community. Accordingly, the Board of Directors shall obtain casualty insurance for all insurable improvements located on the Common Property which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). Policies may contain a reasonable deductible as determined by the Board of Directors. In addition to the other insurance required by this Section, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall equal at least three (3) months total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

8.2. Individual Insurance. By virtue of taking title to a Lot (including a Condominium Unit and a Townhome 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 individual Lots, and each Owner covenants and agrees with all other Owners and with the Association that each Owner or a Parcel

Association shall carry all-risk casualty insurance on all structures and a liability policy covering damage or injury occurring on the Owner's property. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policies required hereunder shall be in effect at all times, and a copy of such policies shall be furnished to the Association upon request.

8.3. Damage and Destruction – Insured by Association. Immediately after damage or destruction by fire or other casualty to any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, 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 necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, a proposal not to repair or reconstruct such property is approved by at least seventy-five percent (75%) of the Total Association Vote and the Declarant. 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. 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 members of the Association, levy a special assessment against the Owner of each Lot. Additional assessments may be made in like manner, as necessary, 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 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, the property shall thereafter be maintained by the Association in a neat and attractive condition.

8.4. Damage and Destruction – Insured by Owners. Improvement on a Lot damaged by fire or other casualty shall be repaired or reconstructed in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 6 of this Declaration. The repair or reconstruction shall be completed within seventy-five (75) days after the damage occurred or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris and ruins therefrom within seventy-five (75) days after such damage occurred, and thereafter maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay all costs which are not covered by insurance proceeds.

## **Article 9. Mortgagee Provisions**

9.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor, and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of (a) any condemnation loss or any casualty loss which affects a material portion of the Community, or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an



Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

9.2. Audit. Upon written request of any institutional holder of a first Mortgage, and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements of the Association within ninety (90) days of the date of the request.

9.3. No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

9.4. VA/HUD Approval. As long as the Declarant has the right to appoint and remove the officers and/or directors of the Association, and so long as the project is approved by the U.S. Department of Housing and Urban Development ("HUD") for insuring, or the U.S. Department of Veterans Affairs ("VA") for guaranteeing, any Mortgage in the Community, the following actions shall require the prior approval of the VA and/or HUD as applicable: annexation of additional property to the Community, except for unilateral annexation by Declarant as provided herein; dedication of Common Property to any public entity; merger, consolidation or dissolution of the Association; and material amendment of the Declaration, Bylaws or Articles of Incorporation.

## **Article 10. Easements**

10.1. General. Each Lot shall be subject to those easements, if any, shown or set forth on the recorded subdivision or condominium plats 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 the Clerk of Superior Court for Cobb County, Georgia.

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

(a) the right of the Association to charge reasonable admission and other fees for the use of any Community recreational facilities, to limit the number of Persons who may use the Community recreational facilities, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by authorized users and their guests and invitees;

(b) the right of the Association to suspend the right of an Owner to use the Community recreational facilities for any period during which any past due assessment against any Lot of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations;

(c) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, 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 Lots (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 Lot 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 Lot or other property located within the Community);

(d) the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Property to government entities, any quasi-governmental agency or to any utility company or cable television company;

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

(f) 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; and

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

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

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

10.5. Easement for Maintenance – Association. Declarant hereby grants to the Association a perpetual easement across the exterior portions of all Lots as may be reasonably necessary for the

maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Lots, and reasonable steps shall be taken to protect such property, and damage shall be repaired by the Association or its contractors at their sole expense.

10.6. Easement for Maintenance – Owners. Declarant hereby reserves for the benefit of each Lot reciprocal appurtenant easements between adjacent Lots for the purpose of maintaining or repairing the improvements located on each Lot, which easement shall extend to a distance of three (3) feet as measured from any point on the common boundary between the Lot. 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 improvements located on the Lot over which this easement is exercised which arises out of such maintenance or repair work.

10.7. Easement for Signage, Lighting, Landscaping and Similar Items. There is hereby reserved to Declarant, for so long as it retains its rights as Declarant, a nonexclusive easement over all Lots and Common Property for a distance of ten (10) feet behind any Lot line which parallels a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features and/or "theme areas," lighting, stone, wood, or masonry wall features and/or related landscaping.

10.8. Easement for Entry Features and Streetscapes. There is hereby reserved to the Declarant and granted to the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon any portion of a Lot containing such entry features or streetscapes, as may be more fully described on the recorded subdivision or condominium plats for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around entry features and streetscapes, and the right to grade the land under and around the same.

10.9. Easement for Drainage. There is hereby reserved to the Declarant and granted to the Association and any Approved Builder a blanket easement across all Lots for creating and maintaining satisfactory storm water drainage in the Community; provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the dwelling structure. 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. This easement expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the land, or to take any other similar action reasonably necessary, following which Declarant, Approved Builder or Association, as applicable, shall restore the affected property to its original condition as near as practicable. It is anticipated that increased storm water run off across downstream Lots 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.

10.10. 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 for Declarant and any Approved Builder to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's and such Approved Builder's development, construction and sales activities related to property hereby and hereafter subjected to this Declaration, or nearby property being developed by Declarant or such Approved Builder, including, but not limited to, the right to place or authorize the placement of marketing and directional signs on Lots or right-of-way at street intersections within the Community; 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 Lot; the right to tie into any portion of the Community with streets, driveways, paths, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to grant easements over, under, in or on the Community, including without limitation the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to convert Lots (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant and any Approved Builder may use residences, offices or other buildings owned or leased by Declarant or such Approved Builder as model residences and sales offices, and may also use Community recreational facilities as a sales office without charge. This Section shall not be amended without the Declarant's written consent until the Declarant's rights hereunder have terminated as herein provided.

#### **Article 11. General Provisions**

11.1. Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations 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 or condominium plats for the Community, and in the deed to such Owner's Lot, if any. The 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. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Association, the Declarant or an aggrieved Owner. Failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. 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 design guidelines, and to assess the cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

11.2. Occupants Bound. All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design 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 design 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.

11.3. Self-Help. In addition to any other remedies provided for herein, the Association, the Declarant, the ARC, or their respective duly authorized agents, shall have the power to enter upon any Lot or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the violating Owner shall be given ten (10) days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required herein or 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.

11.4. 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 applicable law, if less), unless a written instrument signed by the then Owners of at least two-thirds (2/3) of the Lots has been recorded within the year immediately preceding the beginning of a twenty (20) year renewal period, agreeing to terminate the same; or (b) extended, renewed, modified or terminated as otherwise provided herein or by applicable law.

11.5. Termination of Rights of Declarant and Approved Builder. The rights of Declarant and any Approved Builder 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 or any Approved Builder, as the case may be, no longer owns any property in the Community and Declarant no longer has the right to unilaterally annex additional property to the Community as provided herein, and a certificate of occupancy has been issued for a dwelling on each Lot in the Community; or (b) the date of recording by Declarant (or by an Approved Builder) in the real estate records of the county where the Community is located of a written instrument terminating all of Declarant's (or Approved Builder's) rights hereunder.

11.6. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment 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; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company, including, without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner of such Lot consents thereto in writing. Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Owner. The Board of Directors, with the written consent of the Declarant, and without a vote of the Owners, may amend this Declaration for the sole purpose of electing to be governed by the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.* In addition to the above, this Declaration may be amended upon the affirmative vote or written consent of the Owners of at least two-thirds (2/3) of the Lots and the consent of Declarant. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained, and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation, and Georgia law were given.

11.7. Challenges to Amendment. Any action to challenge the validity of an amendment adopted as provided herein must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

11.8. 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.

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

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

11.11. 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.

11.12. Preparer. This Declaration was prepared by Neil S. Morrisroe, McLain & Merritt, P.C., 3445 Peachtree Road, N.E., Suite 500, Atlanta, Georgia 30326.

11.13. Notices. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Lot, and to the Declarant or to an Approved Builder in the Association at the address of their respective registered agent on file with the Secretary of State of the State of Georgia. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. 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 private courier service. 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 the 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.

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

11.15. 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.

#### 11.16. Agreements.

(a) 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.

(b) Declarant intends to assign its rights and delegate its duties and obligations to the Association in and to any and all agreements required by governmental authorities, or deemed necessary or appropriate by Declarant, in connection with the development of all or any portion of the real property submitted, or to be submitted, to the Declaration from time to time, including without limitation, utility easements, access easements, indemnification agreements, flood plain development agreements, detention pond maintenance agreements, lake maintenance agreements, and dam maintenance agreements. Upon such assignment, the Association shall assume and agree to perform all of the duties and obligations of Declarant thereunder; and the Association shall hold Declarant harmless from and against any liability arising under such instruments from and after the effective date of such assignment. Unless Declarant has assigned its rights and delegated its duties and obligations to the Association under any such agreement within three (3) years following the execution of such agreement, the assignment, delegation and assumption shall be automatically deemed to have occurred on the third anniversary thereof.

11.17. 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 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.

11.18. 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 (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided herein, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. 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.

**IN WITNESS WHEREOF**, the Declarant herein hereby executes this instrument under seal, this \_\_\_\_\_ day of October, 2007.

**DECLARANT:**

AVIGNON, LLC, a Georgia limited liability company

By: \_\_\_\_\_  
Jack G. Williams, Manager

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public  
My Commission expires:

[Notarial Seal]



**Exhibit "A"**  
**WRITTEN DESCRIPTION**

All that tract or parcel of land lying and being in Land Lots 886 and 887 of the 17th District, 2nd Section of Cobb County Georgia and being more particularly described as follows:

Beginning at a 1 1/2" axle found at the Land Lot corner common to Land Lots 840, 841, 886, and 887; thence along the west line of Land Lot 886 North 01 degrees 11 minutes 26 seconds East, a distance of 702.75' to a point; Thence departing said Land Lot line North 01 degrees 57 minutes 12 seconds East a distance of 59.62' to a point; Thence South 85 degrees 38 minutes 48 seconds East a distance of 20.83' to a point; Thence North 37 degrees 01 minutes 45 seconds East a distance of 107.62' to a point; Thence North 52 degrees 31 minutes 32 seconds East a distance of 56.54' to a point; Thence North 74 degrees 08 minutes 03 seconds East a distance of 54.75' to a point; Thence North 79 degrees 09 minutes 04 seconds East a distance of 49.85' to a point; Thence North 72 degrees 45 minutes 59 seconds East a distance of 44.70' to a point; Thence North 56 degrees 07 minutes 21 seconds East a distance of 96.52' to a point; Thence North 42 degrees 38 minutes 26 seconds East a distance of 224.70' to a point; Thence North 28 degrees 38 minutes 26 seconds East a distance of 23.51' to a point located on the Southerly Right-of-Way of Paces Ferry Road (variable R/W); Thence along the Southerly Right-of-Way of Paces Ferry Road (variable R/W) South 85 degrees 44 minutes 09 seconds East a distance of 21.99' to a point; Thence South 85 degrees 44 minutes 46 seconds East a distance of 31.96' to a point; Thence North 64 degrees 37 minutes 17 seconds East a distance of 68.71' to a point; Thence North 88 degrees 07 minutes 18 seconds East a distance of 35.09' to a point; Thence South 51 degrees 35 minutes 10 seconds East a distance of 125.24' to a point located on the Westerly Right-of-Way of Boulevard Hills Road (variable R/W), Thence South 51 degrees 35 minutes 10 seconds East a distance of 21.40' to a point located at the intersection of the Southerly Right-of-Way of Paces Ferry Road (variable R/W) and the Easterly Right-of-Way of Boulevard Hills Road (variable R/W) Thence along the Easterly Right-of-Way of Boulevard Hills Road (variable R/W) the following bearings and distances: South 17 degrees 33 minutes 39 seconds West a distance of 48.52' to a point; Thence South 27 degrees 30 minutes 39 seconds West a distance of 50.00' to a point; Thence South 43 degrees 28 minutes 39 seconds West a distance of 49.90' to a point; Thence South 55 degrees 56 minutes 42 seconds West a distance of 46.82' to a point; Thence South 52 degrees 05 minutes 09 seconds West a distance of 50.00' to a point; Thence South 39 degrees 50 minutes 09 seconds West a distance of 49.90' to a point; Thence South 31 degrees 03 minutes 39 seconds West a distance of 119.00' to a point; Thence South 30 degrees 42 minutes 09 seconds West a distance of 123.70' to a point; Thence South 24 degrees 45 minutes 45 seconds West a distance of 73.28' to a point; Thence South 32 degrees 16 minutes 32 seconds West a distance of 47.73' to a point; Thence South 37 degrees 20 minutes 09 seconds West a distance of 99.90' to a point; Thence South 28 degrees 06 minutes 42 seconds West a distance of 51.84' to a point; Thence South 10 degrees 43 minutes 17 seconds West a distance of 49.96' to a point; Thence South 41 degrees 34 minutes 03 seconds East a distance of 49.80' to a point; Thence South 71 degrees 48 minutes 58 seconds East a distance of 170.78' to a point; Thence South 78 degrees 41 minutes 47 seconds East a distance of 49.94' to a point; Thence South 70 degrees 49 minutes 53 seconds East a distance of 100.67' to a point; Thence South 60 degrees 03 minutes 21 seconds East a distance of 50.00' to a point; Thence South 39 degrees 34 minutes 50 seconds East a distance of 50.52' to a point; Thence South 33 degrees 35 minutes 39 seconds East a distance of 54.15' to a point; Thence South 14 degrees 03 minutes 42 seconds East a distance of 46.14' to a point; Thence South 07 degrees 34 minutes 47 seconds East a distance of 57.78' to a point; Thence South 16 degrees 47 minutes 08 seconds West a distance of 45.44' to a point; Thence South 38 degrees 52 minutes 26 seconds West a distance of 43.55' to a point; Thence North 49 degrees 33 minutes 34 seconds West a distance of 27.50' to a point; Thence North 86 degrees 01 minutes 34 seconds West a distance of 33.92' to a point; Thence North 45 degrees 35 minutes 34 seconds West a distance of 54.60' to a point; Thence North 59 degrees 41 minutes 34 seconds West a distance of 50.55' to a point; Thence South 80 degrees 12 minutes 26 seconds West

a distance of 48.31' to a point; Thence South 43 degrees 30 minutes 26 seconds West a distance of 51.31' to a point; Thence South 26 degrees 42 minutes 26 seconds West a distance of 49.83' to a point; Thence South 15 degrees 46 minutes 26 seconds West a distance of 55.00' to a point; Thence South 16 degrees 13 minutes 26 seconds West a distance of 54.39' to a point; Thence South 20 degrees 29 minutes 26 seconds West a distance of 54.30' to a point; Thence South 36 degrees 08 minutes 26 seconds West a distance of 53.32' to a point; Thence South 16 degrees 24 minutes 26 seconds West a distance of 19.82' to a point; Thence South 23 degrees 39 minutes 34 seconds East a distance of 28.72' to a point; Thence South 12 degrees 40 minutes 34 seconds East a distance of 55.87' to a point; Thence South 33 degrees 32 minutes 26 seconds West a distance of 59.49' to a point; Thence South 60 degrees 38 minutes 26 seconds West a distance of 52.61' to a point; Thence South 69 degrees 46 minutes 26 seconds West a distance of 54.35' to a point; Thence South 81 degrees 45 minutes 26 seconds West a distance of 62.88' to a point; Thence North 69 degrees 18 minutes 34 seconds West a distance of 16.44' to a point; Thence North 52 degrees 32 minutes 34 seconds West a distance of 39.50' to a point; Thence North 53 degrees 08 minutes 34 seconds West a distance of 41.60' to a point; Thence along the arc of a curve to the left an arc distance of 52.83' (having a radius of 47.93' subtended by a bearing of North 84 degrees 13 minutes 59 seconds West a chord distance of 50.20') to a point; Thence South 64 degrees 16 minutes 03 seconds West a distance of 53.27' to a point; Thence South 83 degrees 15 minutes 10 seconds West a distance of 14.60' to a point; Thence South 63 degrees 52 minutes 52 seconds West a distance of 15.99' to a point; Thence leaving the Southerly Right-of-Way of South Loop Lake Road (20' R/W) South 63 degrees 52 minutes 52 seconds West a distance of 84.02' to a point located on the line common to Land Lots 887 and 840; Thence along said line North 01 degrees 34 minutes 43 seconds East a distance of 456.98' to a 1-1/2" axle found and the TRUE POINT OF BEGINNING.

Containing 775,747 Sq. Ft. or 17.8087 Acres.

**EXHIBIT "B"**

**Additional Property Which May Unilaterally  
Be Submitted To This Declaration by Declarant**

All that tract or parcel of land lying and being in land Lots 840, 841, 886, 887, 907 and 908, of the 17<sup>th</sup> District, 2<sup>nd</sup> Section, Cobb County, Georgia.

## EXHIBIT "C"

### Bylaws of Avignon at Vinings Owners Association, Inc.

#### Article 1.

##### Name, Membership, Applicability and Definitions

1.1. Name. The name of the corporation shall be Avignon at Vinings Owners Association, Inc. (hereinafter sometimes referred to as the "Association").

1.2. Membership. The Association shall have one class of membership, as is more fully set forth in that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements for Avignon at Vinings (such Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration."), the terms of which pertaining to membership are specifically incorporated by reference herein.

1.3. Definitions. The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

#### Article 2.

##### Association – Meetings, Quorum, Voting, Proxies

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

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

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

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

2.5. Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Lot of each member (as shown in the records of the Association as of the record date) a notice of each annual or special meeting of the Association stating the date, time and place where it is to be held, and, if and to the extent required by the Georgia Nonprofit Corporation Code (O.C.G.A. § 14-3-

101, *et seq.*) or other applicable law (the "Governing Law"), the purpose(s) thereof. If an Owner wishes notice to be given at an address other than the Lot, the Owner shall designate by notice in writing to the Secretary such other address. Notices shall be mailed or delivered not less than ten (10) days (or if notice is mailed by other than first-class or registered mail, thirty (30) days), nor more than sixty (60) days before the meeting. If any meeting of the members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If, however, a new record date is or must be fixed under the Governing Law, notice of the adjourned meeting shall be given to persons who are members of record as of the new record date.

2.6. Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, signed by the member, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member; whether in person or by proxy, shall be deemed waiver by such member of lack of notice or defective notice, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

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

2.8. Membership List. After the record date for any meeting is established by the Board of Directors, the Secretary shall prepare an alphabetical list of the names and addresses of all of the members who are entitled to notice of the meeting. Beginning at least two (2) business days after notice is given of the meeting for which the list was prepared, the list of members shall be available for inspection by any member or a member's agent or attorney at the Association's principal office or at such other reasonable place as may be specified in the notice. In addition, the list shall be available for inspection at the meeting or any adjournment thereof.

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

2.10. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxy appointment forms shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon (a) receipt of notice by the Secretary of the death or judicially declared incompetence of a member; (b) receipt by the Secretary of written revocation signed by the member; (c) receipt by the Secretary of a subsequent appointment form signed by the member; (d) attendance by the member and voting in person at any meeting; or (e) the expiration of eleven (11) months from the date of the proxy appointment form.

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

2.12. Action Without a Formal Meeting. Any action required or permitted to be approved by the members may be approved without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed and dated by members (including the Declarant, if the consent of the Declarant

is required) holding the voting power required to pass such action at a meeting held on the record date for such action. The record date for such action shall be the date that the first member signs a consent. Such action shall be approved when the Secretary receives a sufficient number of such consents dated within seventy (70) days of the record date for such action. If less than unanimous consent is obtained, the approval shall be effective ten (10) days after the Secretary gives written notice of the approval to all members who did not sign a consent. Each signed consent shall be included in the minutes of meetings of members filed in the permanent records of the Association.

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

### **Article 3. Board of Directors: Number, Powers, Meetings**

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

3.2. Directors Appointed by Declarant. The Declarant shall have the right to appoint or remove any member or members of the Board of Directors, or any officer or officers of the Association, until such time as the first of the following events shall occur: (a) the expiration of ten (10) years after the date of the recording of the Declaration; (b) the date on which seventy-five percent (75%) of the Lots planned by Declarant to be a part of the Community shall have been improved with a dwelling and conveyed to an Owner for occupancy as a residence; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. The directors appointed by the Declarant need not be Owners or residents in the Community. The total number of Lots planned by Declarant for the Community shall initially be the number of Lots shown on the Declarant's land use plan for the development, as it may be amended from time to time. Inclusion of property on the land use plan shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land use plan bar Declarant from subjecting such property to the Declaration. The final total number of Lots planned for the Community shall be the actual number of Lots shown on the recorded subdivision plats for the Community, regardless of any different number of Lots shown from time to time on the land use plan. The Declarant shall notify the Association when the final subdivision plat for the Community has been recorded.

3.3. Number of Directors. During the period that the Declarant has the right to appoint and remove the officers and directors of the Association as provided above, the Board of Directors shall consist of from one to three members as determined by Declarant in writing from time to time. Thereafter, the Board shall consist of not less than three (3) members, with at least one (1) member from each

Parcel, who shall be elected as provided below; the number of members of the Board shall be increased if necessary so that there is always an odd number of members.

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

3.5. Election and Term of Office. After the Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting (or take action under Section 2.12 or Section 2.13 in lieu of a meeting), and the members shall elect directors. Each Village shall elect at least one (1) director, with the remaining directors to be elected at large. The members of the Board of Directors shall hold office for one (1) year and shall continue in office until their respective successors shall have been elected and take office. At annual meetings of the membership thereafter (or pursuant to Section 2.12 or Section 2.13 in lieu of a meeting), directors shall be elected. The candidates receiving the most votes shall be elected.

3.6. Removal of Directors. At any annual, regular or special meeting of the Association, any one or more of the members of the Board of Directors elected by the members may be removed, with or without cause, by a majority of the Total Association Vote, and a successor may then and there be elected to fill the vacancy thus created. The notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is removal of a director. A director whose removal by the members has been proposed shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings, or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the remaining directors.

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

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

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

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

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

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

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

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

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

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

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

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

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each member to the common expenses;

(b) making assessments to defray the common expenses and establishing the means and methods of collecting such assessments;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;



(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending rules and regulations;

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

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the members concerning the Association;

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

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

(k) authorization of contracts on behalf of the Association.

3.19. Management Agent. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager. The term of any management agreement shall not exceed one (1) year, and shall be subject to termination by either party, without cause and without penalty, upon ninety (90) days' written notice.

3.20. Borrowing. The Board of Directors shall have the power to borrow money without the approval of the members of the Association; provided, however, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the total amount of such borrowing exceeds or would exceed ten percent (10%) of the annual budget of the Association.

3.21. Fining or Suspension Procedure. The Board shall not impose a fine (a late charge shall not institute a fine) unless and until the following procedure is followed:

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

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

(ii) that the violator may, within ten (10) days from the date of the notice, request a hearing before the Board regarding the fine or suspension imposed;

- (iii) the name, address and telephone numbers of a person to contact to request a hearing;
- (iv) that any statements, evidence, and witnesses may be produced at the hearing; and
- (v) that all rights to have the fine or suspension reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(b) If a hearing is requested, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. Except for the display of unapproved signs, the fine or suspension shall run from the date that a decision is made by the Board at the conclusion of the hearing or such later date as the Board may determine.

#### **Article 4. Officers**

4.1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

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

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

4.4. Salaries. The officers shall receive no compensation.

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

4.6. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and directors. The immediate supervision of the affairs of the Association shall be vested in the President. It shall be the President's duty to attend to the business of the Association and maintain strict supervision over all of its affairs and interests. The President shall keep the Board of Directors fully advised about the affairs and conditions of the Association, and shall manage and operate the business of the Association pursuant to and in accordance with such policies as may be prescribed from time to time by the Board of Directors.

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

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

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

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

## **Article 5. Committees**

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

## **Article 6. Miscellaneous**

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

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

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

6.4. Amendment. These Bylaws may be amended by the Board of Directors with the consent of the Declarant if an amendment is necessary to (a) bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation, or judicial determination which shall be in conflict therewith; (b) enable any title insurance company to issue title insurance coverage with respect to the

Lots subject to the Declaration; (c) enable an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase Mortgage loans on the Lots subject to the Declaration; (d) enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to the Declaration; or (e) comply with the provisions of the Georgia Property Owners Association Act, O.C.G.A. § 44.3-220, *et seq.* In addition, these Bylaws may be amended upon the affirmative vote of at least two-thirds (2/3) of the Total Association Vote and the consent of Declarant; provided, however, that the U.S. Department of Veterans Affairs (if it is then guaranteeing Mortgages in the Community or has issued a project approval for the guaranteeing of such mortgages) and/or the U.S. Department of Housing and Urban Development (if it is then insuring any Mortgage in the Community or has issued a project approval for the insuring of such mortgages) shall have the right to veto amendments to these Bylaws for as long as the Declarant has the right to appoint and remove the directors and officers of the Association.