

THE PARK ON CHURCH



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STATE OF GEORGIA

COUNTY OF COBB

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**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS, AND, RESTRICTIONS
FOR
THE PARK ON CHURCH TOWNHOMES**

THE PARK ON CHURCH

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Exhibit A Description of the Property

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**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR
THE PARK ON CHURCH TOWNHOMES**

THIS DECLARATION of Easements, Covenants, Conditions and Restrictions for The Park on Church Townhomes ("Declaration") is made and declared as of February 22, 2016, ("Declaration Effective Date") by VENTURE HOMES, INC., a Georgia corporation ("Declarant").

STATEMENT OF BACKGROUND

A. Declarant is the owner and developer of real property in the City of Smyrna, Cobb County, Georgia (the "Property", as defined in Article 1), on which Declarant wishes to impose a general plan of use and development, with restrictive covenants and easements for use of Common Property.

B. As part of Declarant's plan for the Property, this Declaration provides for the creation of a homeowner association (the "Association", as defined in Section 1.5) to own, operate and maintain Common Property, and to administer and enforce the Governing Documents. In addition, the Declaration establishes an Architectural Review Board to administer and enforce the provisions of this Declaration and the Design Guidelines regarding architectural control.

C. This Declaration does not and is not intended to create a property owners' association within the meaning of the Georgia Property Owners' Association Act (O.C.G.A §44-3-220, *et seq.*).

D. This Declaration does not and is not intended to create a condominium regime subject to the Georgia Condominium Act, O.C.G.A. §44-3-70, *et seq.*

DECLARATION

Declarant declares that all of the Property is and will be held, sold, used and conveyed subject to the easements, restrictions, covenants, and conditions set forth in this Declaration, which runs with the title to the Property. This Declaration is binding on all parties having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns, and inures to the benefit of each owner of any portion of the Property.

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COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

ARTICLE 1 DEFINITIONS

Capitalized terms not defined in the Statement of Background have the meaning ascribed to them in this Article 1.

1.1 **“Additional Property”** means the real property located within a one-half (1/2) mile radius from the boundary of the land described in Exhibit A, and subject to annexation under Section 7.5(d).

1.2 **“ARB”** means the Architectural Review Board charged with administration of the architectural guidelines for the Community, as described in Article 11.

1.3 **“Articles of Incorporation”** mean the Articles of Incorporation of the Association, as filed with the Georgia Secretary of State.

1.4 **“Assessments”** mean the amounts levied to pay for the expenses of the Association as further defined in Article 5, including General Assessments, Special Assessments, Specific Assessments and Working Capital Assessments.

1.5 **“Association”** means a homeowner association incorporated or to be incorporated by Declarant as a Georgia nonprofit corporation known as “The Park on Church Townhome Association, Inc.”

1.6 **“Board of Directors”** mean the Board of Directors of the Association.

1.7 **“Bylaws”** mean the Bylaws of the Association.

1.8 **“Common Area”** means the tracts or parcels of land shown on the Final Plat as “common area”, “open space”, “amenity area”, “mail kiosk”, or similar designation, and intended for use as Common Property.

1.9 **“Common Property”** means the Common Area and all other real and personal property, easements and licenses, owned, leased, or for which possessory or use rights are held by the Association for the common use, benefit, and enjoyment of the Owners.

1.10 **“Common Expenses”** mean the actual and estimated expenses for application to the general benefit of all Owners (including any reasonable reserve) as the Board of Directors finds necessary or appropriate. During the Development Period, Common Expenses do not include expenses incurred for initial construction or installation of improvements to the Common Property, but do include the maintenance of Common Property once installed.

1.11 **“Community”** means The Park on Church subdivision, including the Property, any Additional Property submitted to the Declaration, and the rights-of-way and utilities serving the Property.

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1.12 **“Community-Wide Standard”** refers to the standard of conduct, maintenance, or other activity generally prevailing in the Community as initially determined by the Zoning Resolution and Declarant. After the Development Period, the Board of Directors or ARB may revise the Community-Wide Standard so long as the revision is not inconsistent with the Community-Wide Standard originally established by Declarant.

1.13 **“Design Guidelines”** mean the design, architectural and construction guidelines and application and review procedures for the Property established and administered pursuant to Article 11.

1.14 **“Declarant”** means Venture Homes, Inc. and the following: (a) each successor or assign taking title to any portion of the Property or the Additional Property for the purpose of development and sale of lots or homes in the Community; and (b) named as Declarant by the immediately preceding Declarant in a written assignment recorded in the Official Records.

1.15 **“Development Period”** means the period of time the Property is subject to development. The Development Period begins on the Declaration Effective Date and continues until certificates of occupancy are issued on one hundred percent (100%) of the Units shown on the Final Plat, and the homes are owned or occupied by Persons other than Declarant.

1.16 **“Eligible Holder”** has the meaning set forth in Section 10.1 regarding Mortgage Lenders.

1.17 **“Exclusive Common Area”** means a portion of the Common Property intended for the exclusive use, or primary benefit of a one or a limited number of Units, as more particularly described in Section 4.3.

1.18 **“Final Plat”** means one or more subdivision plats for the Property, as amended from time to time, and recorded in the Official Records.

1.19 **“General Assessment”** has the meaning set forth in Section 5.1(a).

1.20 **“Governing Documents”** include this Declaration, the Design Guidelines, rules and regulations established by the Association, and the Articles of Incorporation and Bylaws of the Association.

1.21 **“Indemnified Parties”** mean the members of the Board of Directors and other Persons named in Section 8.8(a).

1.22 **“Management Company”** means a professional management company complying with Georgia licensing law to which the Board of Directors may delegate the duties of the Association.

1.23 **“Member”** means a member of the Association, with the rights and obligations under Article 3.

1.24 **“Mortgage”** means a loan secured by a Unit and evidenced by a mortgage, deed to secure debt, deed of trust, or similar instrument recorded in the Official Records.

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- 1.25 **“Mortgage Lender”** means the owner, holder or servicer of a Mortgage.
- 1.26 **“Official Records”** mean the records maintained by the Clerk of the Superior Court of Cobb County for the recording of deeds and other documents affecting title to property.
- 1.27 **“Owner”** means one or more Persons holding record title to a Unit (including Declarant) but excluding a Person holding an interest in a Unit solely as security for performance of an obligation, such as a Mortgage Lender.
- 1.28 **“Person”** means a natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person, or any other legal entity.
- 1.29 **“Private Streets”** mean the private streets, including pavement, curb and gutter and decorative pavers (as more particularly described in Section 4.4) on which the Units are located within the Community, and providing access to the public right-of-way of Church Road.
- 1.30 **“Property”** means the real property and appurtenances more particularly described on Exhibit A, attached and incorporated by this reference, and Additional Property annexed under Section 7.5(d).
- 1.31 **“Special Assessment”** has the meaning set forth in Section 5.1(e).
- 1.32 **“Specific Assessment”** has the meaning set forth in Section 5.1(f).
- 1.33 **“Unit”** means a portion of the Property, whether improved or unimproved, that is intended for construction of a townhome. Units do not include Common Area or property dedicated to the public.
- 1.34 **“Utility Infrastructure”** means the lines, structures, meters, facilities, drains, casings, etc., for delivery of utilities, including without limitation sanitary sewer lines, storm drains, detention structures and facilities, water lines, meters, and similar for other utilities as applicable.
- 1.35 **“Working Capital Assessment”** has the meaning set forth in Section 5.1(d).
- 1.36 **“Zoning Resolution”** means the Zoning Resolution for the Property approved by the City Council for the City of Smyrna, Cobb County, Georgia on October 6, 2014, rezoning the Community to RTD-Conditional (Residential Townhome District, with conditions), with conditions as referenced on the Final Plat of The Park on Church dated August 6, 2015 and recorded in Plat Book 275, Page 255, Official Records.

ARTICLE 2 GENERAL PROVISIONS

- 2.1 **Statement of Background.** The recitals in the Statement of Background on page 1 are incorporated by this reference and made a part of this Declaration.
- 2.2 **Property Subject to this Declaration.** Upon recording of this Declaration, the real property described on Exhibit A is made subject to this Declaration. Additional Property

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may be submitted to this Declaration as follows: (a) by the recording in the Official Records of an amendment or supplement to this Declaration; or (b) by the recording of a Final Plat in the Official Records referencing this Declaration or submitting Additional Property to this Declaration.

2.3 Duration. The covenants in this Declaration run with title to the Property for an initial period of 20 years. The initial period of 20 years will be automatically renewed under O.C.G.A §44-5-60(d) for an unlimited number of additional 20-year periods, unless terminated under the provisions of O.C.G.A §44-5-60(d)(2). Declarant's intent is that the renewal provisions of O.C.G.A §44-5-60(d)(1) apply to this Declaration even if the number of Units submitted to this Declaration is less than fifteen (15).

2.4 No Merger of Title. Even though Declarant is the current owner of the Property, Declarant's express intent is that the easements reserved and established in the Declaration for the benefit of the Property, Declarant and Owners will not merge into the fee simple estate of individual Units conveyed by Declarant or Declarant's successor, but that the estates of Declarant and individual Unit owners will remain as separate and distinct estates. Any partial or complete conveyance of the Property is subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

2.5 Amendment.

(a) **By Declarant.** Until termination of the Development Period, Declarant may unilaterally amend this Declaration for any purpose. No consent is required unless the amendment adversely affects the title to any Unit or Common Property, in which case only the owner of the Unit or Common Property adversely affected must consent.

(b) **By the Board of Directors.** The Board of Directors has the authority to amend this Declaration without the consent of the Members so long as the amendments have no adverse effect on the rights of Owners and are for the following purposes: (i) to submit the Property to the Georgia Property Owners' Association Act (O.C.G.A §44-3-220, *et seq.*) and conforming this Declaration to any mandatory provisions of the Act; (ii) to correct scrivener's errors and mistakes of fact; (iii) to bring any provision of this Declaration into compliance with governmental regulations, such as the Fair Housing Amendments Act of 1988; or (iv) to enable an institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans to make, purchase, insure or guarantee Mortgage loans on the Units. During the Development Period, all amendments by the Board of Directors require the written consent of Declarant under Section 7.4(b).

(c) **By the Members.** Unless specifically provided elsewhere in this Declaration, an Amendment to this Declaration by the Members requires an affirmative vote or written consent of sixty-seven percent (67%) of the Members. During the Development Period, amendments by the Members also require the written consent of Declarant under Section 7.4(b).

(d) **Validity and Effective Date.** Unless a later effective date is specified in the amendment, an amendment to the Declaration becomes effective on recording in the Official Records.

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2.6 Severability. Invalidation of any provision of this Declaration, or any application of a provision of this Declaration by judgment or court order, in no way affects the validity of other provisions or applications of this Declaration.

2.7 Dispute Resolution. Declarant's intent is to encourage amicable resolution of disputes involving the Community, and to avoid the emotional and financial costs of litigation. Accordingly, the Association, Declarant and the Members covenant to attempt resolution of claims, grievances or disputes involving the Community first through application to the Board of Directors according to the terms of the Bylaws. Failing resolution through the Board of Directors, the Association, Declarant and the Members agree to pursue alternative dispute resolution, such as mediation or arbitration, as a prerequisite to litigation under the terms set forth in the Bylaws.

2.8 Use of "The Park on Church" Name and Logo. Without Declarant's prior written consent, no Person other than Declarant may use the words "The Park on Church" or the logo for "The Park on Church" in any printed or promotional material. Owners may use the words "The Park on Church" solely to specify that particular property is located within the Community, and the Association is entitled to use the words "The Park on Church" in its name.

2.9 Compliance. Every Owner and occupant of a Unit under an Owner must comply with the Governing Documents. Failure to comply constitutes grounds for an action by the Association, Declarant, or by an aggrieved Owner to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 8.6(a).

2.10 Section Headings and Exhibits. The section headings are for reference only and are not intended by Declarant to interpret, define, or limit the scope or content of this Declaration. Exhibits A attached to this Declaration is incorporated by this reference and made a part of this Declaration.

2.11 Time. Time is of the essence of the covenants set forth in this Declaration. The term "business day" means Monday through Friday excluding holidays recognized by the state government of Georgia. If any time period under this Declaration ends on a day other than a business day, then the time period is extended until the next business day.

2.12 Applicable Law. The laws of the State of Georgia apply to the construction and enforcement of this Declaration.

ARTICLE 3 MEMBERSHIP AND VOTING

3.1 Membership. Declarant is the initial Member of the Association. Upon taking title to a Unit, each Owner becomes a Member of the Association. Each Owner holds one membership per Unit. If a Unit is owned by more than one Person, all co-owners share the privileges and responsibilities of membership.

3.2 Types of Membership.

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(a) **Declarant.** As the initial Member of the Association, Declarant has the following membership rights during the Development Period, along with the rights of Declarant under Article 7: (i) the right to appoint the Board of Directors and the Architectural Review Board; and (ii) approval rights over any action, policy or program of the Association, the Board of Directors, committees and the ARB.

(b) **Owner.** Each Owner has the right to one equal vote for each Unit owned.

3.3 Exercise of Voting Rights. On matters for which an Owner is entitled to vote, if the Unit is comprised of more than one Person, prior to the taking of a vote on any matter, the co-owners must determine between themselves who will exercise the voting right, and provide written notice to the Secretary of the Association of the representative chosen. The voting right of an Owner that is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of the Owner, as designated in a written instrument provided to the Secretary of the Association. No vote may be exercised on behalf of a Unit if an Assessment for the Unit is delinquent. The voting and approval rights of Declarant are exercised as set forth in Article 7.

ARTICLE 4 COMMON PROPERTY

4.1 General. The Common Property within the Community includes all Utility Infrastructure, detention structures and facilities, open space, buffer zones, entry monuments, signage, fencing, streetlights and Common Area lighting, landscaping and irrigation of Common Area and Exclusive Common Area, Private Streets, sidewalks and walking trails, centralized mail delivery systems and related structures, and amenities installed by Declarant for the use and enjoyment of the Owners.

4.2 Right of Use and Enjoyment. Every Owner has a right and nonexclusive easement of use, access, and enjoyment in and to the Common Property that is appurtenant to and passes with the title to each Unit. An Owner may extend the right of use and enjoyment to the members of Owner's family, lessees, and social invitees, as applicable, subject to: (a) the provisions of the Governing Documents; (b) restrictions or limitations contained in the agreement conveying property or property rights to the Association; (c) the right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Property; (d) the right of the Association, acting through the Board, to dedicate or transfer all or a portion of the Common Property, subject to approval requirements set forth in the Governing Documents; and (e) the rights of certain Owners to Exclusive Common Area.

4.3 Exclusive Common Area.

(a) **General.** Portions of the Common Area may be designated Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners of specific Units. By way of illustration and not limitation, Exclusive Common Area may include parking areas, driveways, garbage collection areas, landscaped areas and other portions of the Common Area. Costs associated with maintenance, repair, replacement and insurance of Exclusive Common Area may be assessed against the Owners of Units to which the Exclusive Common Areas are assigned as a Specific Assessment, or to the extent the cost of maintenance, repair, replacement

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and insurance of Exclusive Common Area are similar in nature and amount among all Units, those expense may, at the option of the Board of Directors, be paid as part of General Assessments.

(b) **Designation.** Exclusive Common Area may be assigned in the deed by which the Common Property is conveyed to the Association, in this Declaration, in any supplementary or amended Declaration, or on a recorded Final Plat. During the Development Period, Declarant may assign particular Exclusive Common Area to additional Units, or re-assign or adjust boundary lines of Exclusive Common Area. Unless the affected Units are owned by Declarant, the Owners of the affected Units must also approve changes to previous assignments of Exclusive Common Area. After the Development Period ends, changes to Exclusive Common Area require approval of the Board, the vote of Members representing a Majority of the total Class "A" votes in the Association, and the approval of Owners of the affected Units. Reassignment of Exclusive Common Area must be set forth in an amended or supplementary Declaration or shown on a revised recorded Final Plat.

4.4 Private Streets.

(a) **Easement over Private Streets.** The Private Streets are part of the Common Property, and, as such, Owners have a right and nonexclusive easement of use, access, and enjoyment in and to, over and across the Private Streets for ingress and egress to public rights-of-way. Each Owner may extend the right of use and enjoyment to family members, lessees, social invitees and licensees, as applicable. The rights and nonexclusive easements granted herein are appurtenant to the title to each Unit, subject to: (b) the provisions of the Governing Documents; (c) the right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Private Streets (provided that no rule or regulation may result in barring access of Owners to the Private Street for ingress and egress); and (d) the right of the Association, acting through the Board, to dedicate or transfer all or a portion of the Private Streets, subject to approval requirements set forth in the Governing Documents.

(e) **Limitation of Access.** During the Development Period, Declarant may, but is not obligated to install gates across the Private Streets, or otherwise limit access to Members, and their families, guests, licensees and lessees. The Members may, by an affirmative vote or written consent of sixty-seven percent (67%) of the Members, elect to install gates or otherwise limit access to the Community. During the Development Period, the written consent of Declarant under Section 7.4(b) is also required for approval of the installation of gates.

4.5 **Centralized Mail Delivery.** As required pursuant to U.S. Postal Service regulations, the delivery of mail in the Community is limited to a neighborhood delivery center serving the entire Community, or cluster box units serving eight or more Units. The areas in the Community in which the centralized mail delivery facilities are located form part of the Common Property. Each cluster box unit may be designated Exclusive Common Area for the those Units served by the cluster box unit. The centralized mail delivery facilities are subject to the same easements, maintenance requirements, and regulation as any other part of the Common Property.

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ARTICLE 5 ASSESSMENTS

5.1 Creation of Assessments. Assessments are created for Association expenses as follows:

(a) **General Assessments.** General Assessments fund Common Expenses and are payable by Owners beginning the earlier of: (i) occupancy of the townhome on a Unit as a residence, or (ii) acquisition of title to an improved Unit for which a certificate of occupancy has been issued. General Assessments are levied equally against all Units subject to assessment based on budget and assessment rates set at a level reasonably expected to produce total income for the Association equal to total budgeted Common Expenses (including any reserves).

(b) **Budget for General Assessments.** Declarant prepares the initial budget and establishes the initial assessment rates to remain in effect until the end of the first full fiscal year of the Association. Preparation of the initial budget by Declarant includes the right to revise the initial budget and assessment rate. After the end of the first full fiscal year of the Association, the Board of Directors drafts the annual budget to take effect on January 1 of each following year. The annual budget process begins with preparation of a proposed budget by the Board of Directors by October 31 of the year preceding the year that the budget will take effect. Under the budget notice and approval process set forth in the Bylaws, the Board of Directors submits the proposed budget (including a proposed payment schedule) to the Members (and Declarant, during the Development Period); the budget is deemed approved unless sixty-seven percent (67%) of the Members, and Declarant during the Development Period, dispute the budget as set forth in the Bylaws. If the budget is disputed, the Members or the Board of Directors may call a special meeting according to the Bylaws to gain approval of the budget. If a new budget is not in place by January 1 of each year for any reason, Owners are required to pay General Assessments in the same amount and in the manner as the preceding year until the new annual budget is approved. The Board of Directors may prepare a revised budget prior to the end of a fiscal year, if, in the discretion of the Board, a revision is necessary due to unanticipated circumstances. The notice and approval process for a revised budget is the same as for the annual budget, provided that no revised budget (whether prepared by Declarant or the Board of Directors) will become effective until at least thirty (30) days after final approval.

(c) **Reserves.** In determining the annual budget, the Board of Directors must consider reserves needed for capital repairs, replacements and improvements to the Common Property (including without limitation the amenities, entry monuments, signage, landscaping, fencing, streetlights, irrigation system, Utility Infrastructure, detention structures and facilities, Private Streets, pavilion, walking trails, *etc.*), and that take into account the number and nature of replaceable assets included in the Common Property, the expected life of each asset, and the expected repair or replacement cost. The annual budget must reflect amounts required for reserves sufficient to meet the projected needs of the Association. Reserve funds may be held in the Association's general account, or a separate account set aside for reserves.

(d) **Working Capital Assessment.** A Working Capital Assessment is due (i) from the first Owner taking record title to a Unit other than Declarant, or (ii) by an Owner upon first occupancy of a Unit as a residence. The Working Capital Assessment is payable by an Owner in addition to the General Assessment, and is applied to cover initial operating expenses for the

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Association. Payment of the Working Capital Assessment is due at the closing of the purchase and sale of a Unit to the first Owner, or upon demand of the Association, at first occupancy of a Unit as a residence. If a Working Capital Assessment is not paid as required, the amount due is collectible as a Specific Assessment.

(e) **Special Assessments.** The Association may levy Special Assessments to cover emergency expenses, such as costs of repair to Common Property for a casualty loss not covered by insurance. The Board of Directors may propose a Special Assessment by notice to the Members. The notice to the Members must include the proposed time, amount and manner of payment of the Special Assessment. Special Assessments require approval of sixty-seven percent (67%) of the Members, and, during the Development Period, Declarant. Once approved, Special Assessments are levied equally among all Units subject to assessment.

(f) **Specific Assessments.** The Association has the power to levy a Specific Assessment against a Unit for: (i) costs incurred in bringing the Unit into compliance with the terms of the Governing Documents; (ii) costs incurred as a consequence of the actions of the Owner or occupant of a Unit, or the agents, contractors, employees, licensees, invitees, or guests of the Owner; (iii) collection of fines levied by the Association in enforcement of the Declaration; and (iv) collection of unpaid amounts owed to the Association by a Member. Specific Assessments are due and payable in the manner set forth in the Bylaws.

5.2 Covenant to Pay; Lien and Personal Obligation. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No action or failure to act on the part of Declarant or the Association creates a right of setoff or abatement of Assessments. Each Assessment or charge, together with interest, late charges, costs, and reasonable attorneys' fees constitutes a personal obligation of the Person who owned the Unit at the time the Assessment arose, and a continuing lien against the Unit until paid in full. The lien for Assessments is to superior to all other liens except for: (i) taxes, bonds, governmental assessments, and other levies given priority by law, and (ii) a recorded first Mortgage. Upon transfer of title to a Unit, the transferee is jointly and severally liable for any Assessments and other charges due at the time of transfer, excepting a first priority Mortgage Lender under the circumstances set forth in Section 10.3.

5.3 Statements. On written request, the Association will furnish to any Owner liable for an Assessment a written statement signed by an Association officer or designee (such as a Management Company) setting forth whether payment of Assessments is current, or, if a balance is due, the amount of any outstanding Assessments. The statement constitutes conclusive evidence of payment and the outstanding amount due. The Association may require the advance payment of a reasonable processing fee for the issuance of the statement.

5.4 Declarant Responsibility for Assessments. Declarant is exempt from payment of Assessments. During the Development Period, Declarant may elect to fund deficits in the Association's budget, with the amounts paid to be reimbursed to Declarant when the budget deficit is eliminated, or, at the option of Declarant, by a promissory note from the Association to Declarant on commercially reasonable terms.

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ARTICLE 6 EASEMENTS

6.1 Grants of Easements. This Declaration and the easements created under this Declaration constitute covenants running with the fee simple estate of the Property. The grants and reservations of easements in this Declaration are intended by Declarant as independent of the covenants, conditions or contractual agreements under this Declaration; therefore, a breach of a covenant, condition or contractual agreement will not result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

6.2 Liability for Use of Easements. No beneficiary of an easement has a claim or cause of action against Declarant, the Association, or their successors or assigns, arising out of the exercise or failure to exercise any easement reserved in this Declaration or shown on any Final Plat, except in cases of willful or wanton misconduct on the part of Declarant or the Association.

6.3 Common Property. Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Common Property by Declarant, the Association, Members, Owners and their successors-in-title, as follows:

(a) **Owners.** Each Owner has a right and nonexclusive easement of use, access, and enjoyment in and to the Common Property, which is appurtenant to and passes with the title to each Unit. An Owner may extend the Owner's right of use and enjoyment to Owner's family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board of Directors. Rights of individual Owners to the easements under this subsection are subject to this Declaration and the right of the Board of Directors to adopt rules regulating the use and enjoyment of the Common Property.

(b) **Declarant.** During the Development Period, Declarant reserves for Declarant, and Declarant's employees, agents and designees a right and easement over and upon all of the Common Property as deemed appropriate by Declarant for the purpose of making, constructing and installing the improvements to the Common Property. In addition, Declarant may carry on activities or establish facilities incidental to the sale of Units, and Declarant and Declarant's agents are granted easements over the Property for access, and for conducting these activities.

6.4 Encroachment and Lateral Support. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment and lateral support between adjoining parcels within the Property. Each parcel within the Property (including each Unit and the Common Area) is burdened with the easement for lateral support, and benefitted by the right to lateral support from each adjoining parcel. The easements for lateral support and encroachment are appurtenant to and pass with title to each affected parcel. The easement for encroachment includes the right to maintain and use a permitted encroachment. An encroachment is permitted if, due to unintentional placement, settling, or shifting of improvements occurs within three (3) feet of a common boundary. No easement extends to an encroachment due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of the easement.

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6.5 Utilities and Services. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself during the Development Period, and for the Association and the designees of each, for the purpose of installing, maintaining, operating and removing utilities and services for the Community. Additionally, Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period the non-exclusive right and power to grant specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of the Property and the Additional Property.

6.6 Erosion Control and Drainage. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements, for itself, and the Association, and their respective representatives, successors and assigns, contractors and agents, over, across, under, through and upon each Unit for the purposes of controlling soil erosion, drainage of natural or man-made water flow, and installing pipes, lines, conduits or other equipment as necessary for slope control, drainage and waterway maintenance.

6.7 Security, Maintenance and Enforcement. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for Declarant or the Association to enter upon any Unit for emergency, security, or safety reasons, and for the Association to enter onto any part of the Property, including a Unit (but excluding the interior of any home), to: (i) perform maintenance responsibilities under Section 8.5, (ii) make inspections for compliance with the Governing Documents, and (iii) abate or remove any structure, thing or condition that violates the Governing Documents. The easement for emergency, security and safety includes the right for entry onto a Unit to cure a condition which may increase the possibility of fire, rapid or sudden slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board. Except in emergencies, entry onto a Unit may occur only during reasonable hours and after notice to the Owner and occupants. The easement for maintenance and enforcement must be exercised with a minimum of interference to the quiet enjoyment to the property of the Owner. During maintenance activities, any damage to permitted improvements to a Unit must be repaired by the Association at its expense. All costs incurred to abate a violation, including reasonable attorneys' fees, may be assessed against the violator as a Specific Assessment. Entry by Declarant, the ARB, or the Association (including the members of the Board of Directors) and their agents and contractors (including the Management Company) under this Section does not constitute a trespass.

ARTICLE 7 DECLARANT RIGHTS AND OBLIGATIONS

7.1 Assignment by Declarant. The rights and obligations of Declarant set forth in the Governing Documents may be assigned in whole or in part to the Association or to other Persons with an interest in the Community, provided that the assignment may not reduce an obligation or enlarge a right beyond that which Declarant has under the Governing Documents at the time of the assignment. Upon assignment, Declarant is automatically released from liability arising out of the assigned rights and obligations. An assignment of Declarant's rights becomes effective only by recording Declarant's written assignment in the Official Records.

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7.2 Improvements to Common Property. During the Development Period, Declarant is responsible for the initial installation of improvements to the Common Property, including the Common Area. After initial installation of improvements, the Association is required to maintain the Common Property, at its expense, for the benefit of its Members under Section 8.5.

7.3 Conveyance of Common Property to the Association. Common Property conveyed to the Association by Declarant is deemed delivered to and accepted by the Association upon delivery of personal property, or upon recording of the deed to real property in the Official Records. The Association agrees that the Common Property, including the improvements, are conveyed in a "where is, as is" condition without recourse, and Declarant disclaims and makes no representations, warranties or other agreements, express or implied, except any warranties of title contained in the instrument of conveyance. The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept on behalf of the Association any conveyance to the Association and to execute on behalf of the Association all documents, including without limitation deeds and transfer tax declaration forms, as necessary and convenient to effectuate the conveyance to the Association. The power and agency hereby granted are coupled with an interest and are irrevocable by death, dissolution or otherwise. Declarant is not required to make improvements or repairs prior to conveyance and acceptance under this Section. On written request of Declarant, the Association agrees to re-convey to Declarant any portions of the Property originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines, provided that the reconveyance has no material adverse effect on the rights of any Owner.

7.4 Additional Covenants and Amendments to Covenants. During the Development Period: (a) no additional declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Property is permitted without Declarant's prior written consent; and (b) amendments to the Declaration by any party other than Declarant are permitted only in compliance with the provisions of Section 2.5. Recording of additional covenants or amendments during the Development Period without Declarant's consent will result in the additional or amended covenants being void and of no force and effect, unless subsequently approved by written consent signed by Declarant and recorded in the Official Records.

7.5 Declarant's Rights. During the Development Period, Declarant has the following rights:

(a) Notice of meetings. Declarant is entitled to written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board of Directors, the Architectural Review Board, or any committee of the Association. Notices must comply with the notice requirements of the Bylaws, and include the agenda to be followed at the meeting, or the text of a proposal being considered. Declarant may waive the right to receive notice as provided in the Bylaws.

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(b) Participation in Meetings. Declarant may join in or have Declarant's representatives or agents join in discussion from the floor at any meeting of the Board of Directors, ARB, committee, or the Members.

(c) Declarant Approval Rights. Unless waived by Declarant in writing, Declarant, acting through any authorized representative, has the right to exercise approval rights over any action of the Board of Directors, ARB, committee, or the Members within ten (10) days following the meeting at which the action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) days following receipt of written notice of the proposed action. No action, policy or program subject to Declarant's right of approval will become effective or be implemented without the requirements of subsections 7.5(a) and (b) above having been met.

(d) Annexation of Additional Property. During the Development Period, Declarant may unilaterally subject the Additional Property to the provisions of this Declaration. Annexation by Declarant occurs when the Additional Property is submitted to the Declaration as set forth in Section 2.2. Annexation of Additional Property during the Development Period does not require the consent of the Members, but does require the consent of the owner of the property being annexed, if other than Declarant. Annexation is effective upon the recording of an amended or supplementary Declaration or a Final Plat, as applicable, in the Official Records, unless otherwise provided in the recorded instrument. Nothing in this Declaration may be construed to require Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

(e) Withdrawal of Property. During the Development Period, Declarant has the right to amend this Declaration to remove any portion of the Property from the coverage of this Declaration, provided the withdrawal is not contrary to the overall, uniform scheme of development for the Property. For example, Declarant may withdraw a portion of the Property to: (i) adjust boundary lines, (ii) comply with a statute, rule, regulation or judicial determination, (iii) enable a title insurance company to issue title coverage, or (iv) enable an institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans to make, purchase, insure or guarantee Mortgage loans on the Units. During the Development Period, no consent of any Person is required for withdrawal other than the owner of the property to be withdrawn. If the property is Common Property, the Association agrees to execute a written consent to the withdrawal, and hereby constitutes and appoints Declarant as its agent and attorney-in-fact to execute on behalf of the Association the documents (including without limitation deeds and transfer tax declaration forms), necessary and convenient to effectuate the consent of the Association to the withdrawal of Common Property. The power and agency hereby granted are coupled with an interest and are irrevocable by death, dissolution or otherwise.

ARTICLE 8 ASSOCIATION RIGHTS AND OBLIGATIONS

8.1 **General.** The Association is responsible for management, maintenance, operation and control of the Common Property, and for enforcement of this Declaration. The Association may exercise any right or privilege expressly provided or reasonably implied by the Governing Documents. Unless specifically provided in the Governing Documents or by law, the

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rights and powers of the Association may be exercised by the Board of Directors without a vote of the membership.

8.2 Property of the Association. Once conveyed to the Association, the Association acquires, holds, and disposes of the Common Property in its own name.

8.3 Casualty Loss. If a casualty loss to the Common Property occurs and is covered by the Association's insurance policy, only the Board of Directors (including a duly authorized agent of the Board of Directors) may file and adjust insurance claims and obtain estimates of the cost of repair or reconstruction. The damage or destruction must be repaired or reconstructed unless Members holding at least sixty-seven percent (67%) of the total votes, and Declarant during the Development Period, approve an alternate plan. If the damage or destruction is not repaired and no alternative improvements are authorized, the affected property must be cleared of all debris, landscaped and maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may propose the levy of a Special Assessment as set forth in Section 5.1(e).

8.4 Condemnation of Common Property. The Association through its Board of Directors serves as the representative and attorney-in-fact for the Owners in condemnation or eminent domain proceedings concerning Common Property owned by the Association. The Association may convey Common Property under threat of condemnation only if approved by at least sixty-seven percent (67%) of the Members, and, during the Development Period, the written consent of Declarant. The proceeds from a taking or conveyance under threat of condemnation are payable to the Association for application as determined by the Board of Directors, subject to the approval rights of Declarant during the Development Period.

8.5 Maintenance. The Association is responsible for maintaining the Common Area (including portions of the Exclusive Common Area) and other Common Property of the Association to the Community-Wide Standard, and keeping it in good condition, order and repair, including amenities, entry monuments, signage, fencing, the Private Streets, sidewalks, pavilion, walking trails, centralized mail delivery systems and related structures, easement areas, utilities, sanitary and drainage structures, Utility Infrastructure, amenities, *etc.*). The Association may maintain other property and improvements in the Community that the Association does not own, including without limitation property dedicated to the public (such as the shoulder of a right-of-way or utility easements in the public right-of-way) if the Board of Directors determines that the maintenance is desirable under the Community-Wide Standard. All costs for maintenance, repair and replacement for maintenance under this Section are Common Expenses to be allocated equally among all Units subject to General Assessments.

8.6 Enforcement by the Association.

(a) **Enforcement Powers.** The Association acting through the Board of Directors has the following means of enforcement of this Declaration, to be exercised as set forth in the Bylaws: (i) sanction of a Member by the Board of Directors, including imposition of fines, suspension of the right to vote, or suspension of right to use the Common Property; (ii) self-help, including filing a claim of lien in the Official Records for nonpayment of Assessments, or

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correction of maintenance or construction violations; or (iii) filing a suit at law or in equity to enjoin a violation or recover damages.

(b) **Remedies.** The remedies set forth in this Declaration and the Bylaws are cumulative of any remedies available at law or in equity. If the Association prevails in an action to enforce the Governing Documents, the Association is entitled to recover all costs, including without limitation reasonable attorneys' fees and court costs.

(c) **Exercise of Powers of Enforcement by the Board of Directors.** The Association is not obligated to take action to enforce any covenant, restriction, or rule if the Board of Directors, in the exercise of sound business judgment, determines that the Association's position is not strong enough to justify taking enforcement action, or the cost of taking action outweighs the potential benefit. Any determination by the Board of Directors under this paragraph may not be construed as a waiver of the enforcement rights of the Association in the future.

8.7 Litigation by the Association. The Board of Directors may initiate the following proceedings without consent of the Members: (a) actions brought by the Association to enforce the provisions of the Governing Documents (including the foreclosure of liens); (b) imposition and collection of Assessments under Article 5; (c) property tax appeals; or (d) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. Initiation of any other litigation, including a cross-claim or counterclaim in a suit brought against the Association, requires approval by sixty-seven percent (67%) of the Members. During the Development Period, the initiation of litigation requires the written consent of Declarant.

8.8 Indemnification; Limits of Liability.

(a) **Indemnification of Officers and Board Members.** The Association agrees to indemnify the Board of Directors, the officers and directors of the Association, the ARB and its members, and all committees and committee members of the Association (collectively, the "**Indemnified Parties**") against all damages, liabilities, and expenses, (including reasonable attorneys' fees) incurred in connection with any claim made by reason of serving as or for an Indemnified Party for mistake of judgment (negligent or otherwise), or for personal liability based on a contract or other commitment made or action taken in good faith on behalf of the Association. This indemnity does not extend to individual willful misfeasance, malfeasance, misconduct, or bad faith.

(b) **Limits of Liability.** Neither the Association, Board of Directors, nor any officer, director or committee member, employee, agent, nor contractor (including the Management Company, if any) bear liability to any Member or the Member's or their family members, guests, invitees, agents, servants, contractors or lessees, for injury or damage sustained in the Community (including Common Property or other area maintained by the Association), or for any injury or damage caused by the negligence or misconduct of any Members or their family members, guests, invitees, agents, servants, contractors or lessees. Each Owner, by virtue of the acceptance of title to Owner's Unit, is bound by this Subsection 8.7(b), and waives all rights, claims, demands, and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed under this Subsection.

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8.9 Insurance. The Association is required to maintain commercially reasonable insurance covering the Common Property of the Association and the activities of the Association to the standards set forth in this Section. The insurance policies obtained by the Association must be written on a company authorized to do business in the State of Georgia, and obtained in the name of the Association for the benefit of its Members, officers, directors, and board and committee members. The premiums for insurance obtained by the Association are Common Expenses payable out of General Assessments. The coverage obtained by the Association should include: (a) property insurance covering the Common Property and the property for which the Association bears responsibility for maintaining, repairing and replacing if a casualty loss occurs, regardless of ownership; (b) commercial general liability insurance insuring the Association and its Members for damage or injury caused by the negligence of the Association, its Members, or employees, agents, or contractors while acting on behalf of the Association; (c) directors and officers liability coverage (or comparable coverage), including coverage for the indemnities set forth in Section 8.8; and (d) crime (or fidelity) insurance covering the actions of Members responsible for handling Association funds to the extent funds are not handled by a Management Company. The Association may, but is not obligated to insure exteriors of Units under a master insurance policy, with premiums are payable by all Owners as a Common Expense.

8.10 Annexation and Withdrawal of Property.

(a) Annexation of Additional Property. After the Development Period, the Association may subject Additional Property to the provisions of this Declaration upon approval by at least sixty-seven percent (67%) of the Members present at a duly called special meeting, or approval in writing by at least sixty-seven percent (67%) of the Members. In addition, annexation of Additional Property requires the consent of the owner of the property being annexed. Annexation of Additional Property by the Association is evidenced as set forth in Section 2.2. Annexation is effective upon the recording in the Official Records, unless otherwise provided in the recorded instrument.

(b) Withdrawal of Common Area. After the Development Period, the Association may withdraw a portion of the Common Area to: (i) adjust boundary lines, (ii) comply with a statute, rule, regulation or judicial determination, (iii) enable a title insurance company to issue title coverage, or (iv) enable an institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans to make, purchase, insure or guarantee Mortgage loans on the Units. Withdrawal of Common Area requires approval by at least sixty-seven percent (67%) of the Members present at a duly called special meeting, or approval in writing by at least sixty-seven percent (67%) of the Members. Withdrawal of Common Area is effective upon recording of the instrument withdrawing the portion of the Common Area in the Official Records, unless otherwise provided in the recorded instrument.

8.11 Landscaping and Yard Maintenance. The Association provides landscaping services and lawn maintenance throughout the Community, on both Common Area and Exclusive Common Area, and maintains the facilities necessary to provide these services, such as the irrigation system. The costs of the services and maintenance of these facilities is funded as part of the Common Expenses.

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8.12 Water Service. Water service for the Community is provided through a master water meter, with submeters for each Unit. The Association is responsible for payment of the entire water service bill. The submeters for the Units will be read by or on behalf of the Association, and Owners billed individually for water use associated with each Unit. The cost of monitoring the submeters may be included either as a Common Expense, or charged on the individual water bills for each Unit. The Association will issue bills to Owners for Unit water usage no less often than every other month. Bills remaining unpaid will be collected as a Specific Assessment under Section 5.1(f), and subject to the provisions in Section 5.2 [Covenant to Pay; Lien and Personal Obligation].

8.13 Provision of Additional Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense, as a Specific Expense (depending on whether the service or facility is provided to all Units or only certain Units), or by requiring payment at the time the service or facility is provided. As an alternative, the Association may arrange for the costs of the services and facilities to be billed directly to Owners by the service provider. By way of example, some services and facilities that may be provided include water and sewer services, additional landscaping (such as upgraded landscaping and planting of annuals), master insurance policies, garbage collection, pest control service, cable, digital, satellite or similar television service, internet, intranet, security, caretaker, fire protection, utilities, and similar services and facilities. The foregoing are examples only; nothing contained in this Section may be relied on as a representation of the services and facilities that will be provided by or through the Association.

ARTICLE 9 OWNER RIGHTS AND OBLIGATIONS

9.1 Rights and Obligations.

(a) **Joint and Several Obligation.** If a Unit is owned by more than one Person, all are obligated jointly and severally to perform the responsibilities of Owner.

(b) **Common Property.** An Owner who leases a Unit is deemed to have assigned to the lessee the Owner's right to use and enjoyment of the Common Property under the easement granted in Section 6.3(a); *provided however*, the Owner remains ultimately responsible for payment of all Assessments and other charges associated with use of the Common Property.

9.2 Unit Maintenance. Each Owner has the responsibility to maintain the Owner's Unit and Exclusive Common Area appurtenant to the Unit to the Community-Wide Standard, including all structures, parking areas, sprinkler and irrigation systems, landscaping and other improvements on the Unit not maintained by the Association. Unless part of the Common Property, each Owner is responsible for keeping any storm drains, ditches or swales located on the Unit clear of debris. If an Owner fails to perform these maintenance responsibilities properly, the Association may perform them and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment in accordance with Section 5.1(f).

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9.3 **Insurance.** Upon taking title to a Unit with a completed townhome, each Owner agrees to carry property insurance for the full replacement cost of all insurable improvements on Owner's Unit, less a reasonable deductible.

9.4 **Casualty Loss to a Unit.** Each Owner agrees that if a casualty loss occurs on a Unit, the Owner will promptly repair or reconstruct the damaged structures or landscaping consistent with the original construction or alternate plans and specifications approved in accordance with Article 11.

9.5 **Use of the Property and Restrictions on Use.** All provisions of the Governing Documents regarding the conduct of Owners and establishing sanctions against Owners apply equally to all occupants (including family members, guests, invitees, agents, servants, contractors or lessees). In the use and enjoyment of the Property, the following restrictions apply:

(a) **Laws of the Jurisdiction.** The restrictions set forth in this Section 9.5 are in addition to federal, state and local laws and ordinances, including without limitation zoning conditions imposed on the Property. In case of a conflict with the laws of the jurisdiction and these restrictions, the laws of the jurisdiction will control.

(b) **Parking.** Generally, motor vehicles may be parked only in garages, driveways, or Common Area set aside for that purpose, provided that commercial vehicles may be parked in the street during daylight hours for periods of time as are reasonably necessary to provide service or to make a delivery within the Property. Unlicensed or inoperable vehicles may be parked only in a garage. Recreational vehicles and trailers must be parked in a garage or in an area on a Unit not visible from the street.

(c) **Common Property.** Permitted use of the Common Property under this Declaration may not be restricted or obstructed by other Owners or occupants. Installation by Owners of fencing, storage sheds, play sets or other structures on Common Area (including Exclusive Common Area), is not permitted without the express written consent of the Association, and approval of the Architectural Review Board. Personal property of Owners or occupants may not be kept, parked or stored on any part of the Common Property without the prior written consent of the Association, and Declarant during the Development Period.

(d) **Nuisance.** Each Owner and occupant is responsible for prevention of any unclean, unhealthy, unsightly, or unkempt condition on a Unit, and from allowing any noise or other condition to disturb the peace, quiet, safety, and comfort, of the occupants of surrounding property. Reasonable and normal development, construction and sales activities by Declarant during legal hours are not considered a nuisance or a disturbance of quiet enjoyment.

(e) **Storage of Materials, Garbage, and Dumping.** Garbage cans must be screened or concealed from view of neighboring streets and property. Yard waste, rubbish, trash, and garbage must be regularly removed. Dumping of yard waste, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch or stream within or abutting the Community is prohibited.

(f) **Drainage and Grading.** Each Owner is responsible for controlling the natural and man-made water flow from a Unit, and for preventing excessive water flow from the Unit. Each

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Owner is also responsible for maintaining all drainage areas located on the Unit. Required maintenance includes maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas. The grading of a Unit may not be altered without prior approval pursuant to Article 11 of this Declaration. Compliance is required for State and County ground disturbance laws, including O.C.G.A §25-9-6, also referred to as the "Call Before You Dig" law.

(g) **Buffer Zones and Non Disturbance Areas.** All buffer zones or non-disturbance areas on any recorded plat of the Property must be left in a natural state. Any proposed alteration of a buffer zone or non-disturbance area (including removal of fallen limbs, dead trees, or other natural debris) must comply with documents recorded in the Official Records, and State and local requirements, including local zoning and planning ordinances.

(h) **Residential Use.** Units may be used only for residential purposes by a single family, and for ancillary business or home office uses. No Unit may be used for a business purpose, such as leasing of the Unit as an income-producing property. A business or home office use is considered ancillary so long as: (i) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the activity conforms to all zoning requirements; (iii) the activity does not involve regular visits by clients; (iv) the activity does not increase traffic or include frequent deliveries; and (v) the activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as determined in the sole discretion of the Board of Directors.

(i) **Leasing.** In order to preserve the character of the Community as predominantly owner-occupied, and to comply with the eligibility requirements for financing in the secondary mortgage market, the leasing of Units is governed by the restrictions imposed by this Section. Units may be leased for residential purposes only, for a term of no less than one year. All leases must include an acknowledgement by the lessee of the requirements of the Governing Documents. The Board may impose additional requirements on leasing, such as limitations on the total number of Units leased at any one time or the number of Units leased by a single Person, prior notice of a lease, the name of the lessee, and restrictions on leasing designed to keep the Community in compliance with Mortgage Lender loan approval guidelines. Each Owner leasing a Unit is responsible for assuring compliance of the lessee with the Governing Documents.

(j) **Rules and Regulations.** In addition to the use restrictions set forth in this Section, the Board of Directors may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Community. The Board is required to provide notice of new or amended rules to all Owners and occupants according to the provisions for notice under the Bylaws. The Board must provide notice at least thirty (30) days prior to the effective date, except in the case of emergency. The new or modified rule becomes binding on all Owners and occupants on the effective date stated in the Board's notice, unless overruled, canceled, or modified in a regular or special meeting by Members holding a Majority of the total votes in the Association, and, during the Development Period, the written consent of Declarant.

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(k) **Compliance with Laws.** Each Owner must comply with all federal, state and local laws governing the use of, and construction on, a Unit.

ARTICLE 10 MORTGAGE LENDER PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Property.

10.1 Notices of Action. A Mortgage Lender providing a written request to the Association, including the Mortgage Lender's contact information, and the street address of the Unit securing the Mortgage, becomes an Eligible Holder entitled to timely written notice of: (a) a condemnation or casualty loss affecting a material portion of the Property or the Unit securing the Mortgage of the Eligible Holder; (b) a delinquency or other violation by an Owner continuing for a period of sixty (60) days; or (c) lapse, cancellation, or material modification of an insurance policy maintained by the Association.

10.2 Distribution of Proceeds. No provision of this Declaration or the Bylaws gives an Owner priority over the rights of the first Mortgage Lender on a Unit in the case of distribution of insurance proceeds, or condemnation awards for losses to, or a taking of, the Common Property.

10.3 Liability for Assessments. A Mortgage Lender is not liable for Assessments under Article 5 unless the Mortgage Lender obtains title to a Unit by exercising the remedies provided in its Mortgage. Effective on the date title to a Unit is obtained, the Mortgage Lender is liable for payment of Assessments in the same manner as the Mortgage Lender's borrower.

10.4 Failure of Mortgage Lender to Respond. A Mortgage Lender receiving a written request from the Board of Directors to respond to or consent to an action, if delivered to the Mortgage Lender by certified mail, return receipt requested, or by overnight delivery with receipts provided) is deemed to have approved the action if the Association does not receive a written response from the Mortgage Lender within thirty (30) days of the date of the Association's request.

10.5 Construction of Article 10. Nothing contained in this Article may be construed to reduce the percentage vote that must otherwise be obtained under the Governing Documents, or Georgia law for any of the acts set out in this Article.

ARTICLE 11 ARCHITECTURAL GUIDELINES

11.1 Architectural Review. Each Owner, by accepting a deed to a Unit agrees that all additional improvements or modifications built or installed on a Unit must comply with the architectural guidelines of this Article 11. Declarant hereby establishes an Architectural Review Board ("ARB") to administer the architectural guidelines and review applications for construction of additional improvements and modifications under this Article. ARB members need not be Owners or residents of the Property, or hold any professional degree. Until the end of the Development Period, Declarant has the right to appoint the ARB members. Once Declarant relinquishes the right to appoint ARB members, the Board of Directors, in its discretion, will either serve as the ARB members, or appoint the ARB members.

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11.2 Design Guidelines. In addition to the architectural guidelines set forth in the Zoning Resolution, Declarant may establish Design Guidelines to provide guidance to Owners in modifying a townhome. If established, Declarant will establish the initial Design Guidelines for the ARB. During the Development Period, the ARB may amend the Design Guidelines only with Declarant's consent. If established, the ARB is required to make the Design Guidelines readily available to Owners. The Design Guidelines are not required to serve as the exclusive basis for decisions by the ARB. The ARB may grant variances from compliance with Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require.

11.3 Plan Approval.

(a) **Requirements.** Prior to commencement of construction of an improvement or modification on a Unit, ARB plan approval is required. Plan approval is initiated by submittal of the following to the ARB (collectively, "Plans"), as applicable: (i) grading plans; (ii) complete set of plans and specifications for all structures, including site plan, elevations, floor plans and plans for accessory structures; (iii) plans for landscaping, drainage and outdoor lighting; and (iv) plans for play equipment, patios, gazebos, *etc.* Additional requirements for submittal of Plans may be set forth in the Design Guidelines.

(b) **Approval Process.** The ARB is not required to begin consideration of the Plans until all required documents are received, and any delinquent Assessments associated with the Unit are paid in full. Once the ARB delivers written acknowledgement that all conditions are met for review of the Plans, the ARB has a minimum of thirty (30) days from the satisfaction of all conditions for review (including requirement of submission of additional or modified Plans) to make a decision on approval of the Plans. Plans are deemed approved on the 31st day after receipt of the ARB acknowledgement that all conditions for final review are met.

(c) **Approval Considerations.** The ARB has sole discretion to make final, conclusive, and binding determinations on the Plans based on the aesthetic judgment of the ARB members and whether proposed improvements are consistent with the Design Guidelines in effect at the time of the approval process, and the Community-Wide Standard. Once approved, material modifications require pre-approval by the ARB prior to commencement of construction. Each modification or addition to the improvements on a Unit requires separate approval based on the Design Guidelines in effect at the time the modification or addition is requested. Approval of past Plans does not constitute a waiver by the ARB of the right to withhold approval on similar Plans going forward.

11.4 Enforcement. Any structure, improvement or landscaping placed or made in violation of this Article may be deemed nonconforming and subject to the remedies under this Section. Prior to exercise of remedies, the ARB must provide a notice to cure a violation or nonconformance within a specified period of time by either obtaining approval of the Plans, or removal and restoration of the Unit to substantially the same condition as existed prior to the violation. Should an Owner fail to cure or remove and restore the Unit within the time period specified by the notice, Declarant (during the Development Period), the ARB or the Board of Directors may exercise the remedies set forth in Section 8.6 [Enforcement by the Association], including entry onto the Unit to cure or remove a violation, and restore the Unit. In addition,

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Declarant, during the Development Period, and the Association have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARB.

11.5 Limitation of Liability. The approval process for Plans is intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property only, and does not create a duty to any Person. Review and approval of Plans pursuant to this Article is made on the basis of aesthetic considerations only, and neither Declarant, the Association, the Board of Directors, nor the ARB bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, for ensuring compliance with building codes and other governmental requirements, or for ensuring that all homes are of comparable quality, value or size, of similar design, or aesthetically pleasing to neighboring Owners. In approving construction under this Article 11, Declarant, and the Association, the Board of Directors, the ARB and the members of each are indemnified by the Association as provided in Section 8.8.

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IN WITNESS WHEREOF, the undersigned has executed and delivered this Declaration as of the Declaration Effective Date.

Signed, sealed and delivered in the presence of:

Amber Bridges

Unofficial Witness

DECLARANT:

VENTURE HOMES, INC.,
a Georgia corporation

Terri Carroll

Notary Public

My commission expires:

(NOTARY SEAL)

TERRI CARROLL
NOTARY PUBLIC
Cobb County
State of Georgia
My Comm. Expires Feb. 24, 2018

By: *Robert C. White*
Name: Robert C. White
Title: President

CORPORATE SEAL

CORPORATE SEAL

THE PARK ON CHURCH

EXHIBIT A

Description of the Property

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 342 and 379 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, being The Park on Church subdivision, as shown on the Final Plat of The Park on Church recorded in Plat Book 275, Page 261, Cobb County, Georgia Records, which plat is incorporated by this reference and made a part of this description.

Exhibit A