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**Linda Carter**  
Clerk of Superior Court  
DeKalb County, Georgia

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR THE RESIDENCES AT LULLWATER PARK**

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-TABLE OF CONTENTS-

I	DEFINITIONS	2
II	PROPERTY SUBJECT TO THIS DECLARATION, CONVEYANCE AND PARTITION OF COMMON PROPERTY	4
	PROPERTY HEREBY SUBJECTED TO THIS DECLARATION	4
	OTHER PROPERTY	4
	CONVEYANCE OF COMMON PROPERTY BY DECLARANT TO ASSOCIATION	4
	PARTITION OF COMMON PROPERTY	4
	EXCLUSIVE COMMON PROPERTY	4
III	ASSOCIATION MEMBERSHIP AND VOTING RIGHTS	5
	MEMBERSHIP	5
	VOTING	5
IV	ASSOCIATION RIGHTS AND RESTRICTIONS, VARIANCES	5
	ASSOCIATION RIGHTS AND RESTRICTIONS	5
	VARIANCES	6
V	ASSESSMENTS	6
	PURPOSE OF ASSESSMENT	6
	CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS	6
	COMPUTATION OF ANNUAL ASSESSMENT	7
	SPECIAL ASSESSMENTS	7
	LIEN FOR ASSESSMENTS	7
	EFFECT OF NONPAYMENT OF ASSESSMENTS REMEDIES OF THE ASSOCIATION	8
	DATE OF COMMENCEMENT OF ASSESSMENTS	9
	SPECIFIC ASSESSMENTS	9
	BUDGET DEFICITS DURING DECLARANT CONTROL	9
	WORKING CAPITAL FUND	9
VI	INSURANCE AND CASUALTY LOSSES	10
	INSURANCE ON COMMON PROPERTY	10
	INDIVIDUAL INSURANCE	11
	INSURANCE DEDUCTIBLES	12
	CASUALTY LOSSES	12
VII	CONDEMNATION	13
VIII	ARCHITECTURAL STANDARDS	13
	GENERAL	13
	ARCHITECTURAL CONTROL COMMITTEE	14
	ALTERATIONS TO THE INTERIOR OF A RESIDENCE LOCATED ON A LOT	15
	CONDITION OF APPROVAL	15
	LIMITATION OF LIABILITY	15
	NO WAIVER OF FUTURE APPROVALS	15
	ENFORCEMENT	15
	COMMENCEMENT OF CONSTRUCTION	16
	APPROVAL OF CONTRACTORS, LANDSCAPERS AND ARCHITECTS	16
IX	USE RESTRICTIONS AND RULES	16
	GENERAL	16

	RESIDENTIAL USE	16
	NUMBER OF OCCUPANTS	17
	USE OF COMMON PROPERTY	17
	OCCUPANTS BOUND	18
	SIGNS	18
	VEHICLES AND PARKING	18
	GARAGES	19
	YARD AND GARAGE SALES	19
	ANIMALS AND PETS	19
	PROHIBITION OF DAMAGE, NUISANCE AND NOISE	20
	UNSIGHTLY OR UNKEPT CONDITIONS	21
	WINDOW TREATMENTS	21
	AIR CONDITIONING UNITS	21
	ANTENNAS AND SATELLITE DISHES	21
	FENCES	21
	RECREATIONAL AREAS	22
	TRASH DISPOSAL	22
	SUBDIVISION OF LOT	22
	OUTBUILDINGS	22
	TREE REMOVAL	22
	FIREARMS AND FIREWORKS	22
	HEATING OF RESIDENCES IN COLDER MONTHS	22
	ABANDONED PERSONAL PROPERTY	23
	IMPAIRMENT OF RESIDENCES AND EASEMENTS	23
	LIGHTING	23
	MAILBOXES	23
	DECKS	23
	GRILLING	23
	FIRE SPRINKLER SYSTEM	23
X	LEASING	24
	PURPOSE	24
	GENERAL	24
	LEASING PERMITS	24
	HARDSHIP LEASING PERMITS	25
	LEASING PROVISIONS	25
XI.	SALE OF LOTS	27
XII	MAINTENANCE	27
	ASSOCIATION'S RESPONSIBILITY	27
	OWNER'S RESPONSIBILITY	29
	FAILURE TO MAINTAIN	30
	MEASURES RELATED TO INSURANCE COVERAGE	30
	MAINTENANCE STANDARDS AND INTERPRETATION	31
	MOLD DISCLOSURE AND WAIVER	31
XIII.	PARTY WALLS AND FENCES	32
	GENERAL RULES OF LAW TO APPLY	32
	SHARING OF REPAIR AND MAINTENANCE	32
	RIGHT TO CONTRIBUTION RUNS WITH LAND	32
XIV	MORTGAGEE PROVISIONS	32
	NOTICES OF ACTION	32
	APPROVAL OF ACTION	33

NO PRIORITY	33
NOTICE TO ASSOCIATION	33
AMENDMENTS BY BOARD	33
VA/HUD APPROVAL	33
APPLICABILITY OF THIS ARTICLE	34
FAILURE OF MORTGAGEE TO RESPOND	34
XV EASEMENTS	34
EASEMENTS FOR ENCROACHMENT AND OVERHANG	34
EASEMENTS FOR USE AND ENJOYMENT	34
EASEMENTS FOR STREET LIGHTS AND UTILITIES	35
EASEMENT FOR ENTRY	35
EASEMENT FOR ASSOCIATION MAINTENANCE	36
EASEMENT FOR ENTRY FEATURES AND STREET SIGNS	36
EASEMENTS FOR ACCESS, INGRESS, AND EGRESS	36
PUBLIC IN GENERAL	36
XVI GENERAL PROVISIONS	36
AMENDMENT	36
DURATION	37
SECURITY	37
DISPUTE RESOLUTION	38
LITIGATION	38
INDEMNIFICATION	39
IMPLIED RIGHTS	39
PERPETUITIES	39
SEVERABILITY	39
AGREEMENTS	39
DISCLOSURES	39
CAPTIONS	41
GENDER AND GRAMMAR	41
XVII DECLARANT'S RIGHTS	41
TRANSFER OF DECLARANT'S RIGHTS	41
CONSTRUCTION AND SALE PERIOD	41

**-Table of Exhibits-**

Description of Property Submitted	"A"
Bylaws of The Residences At Lullwater Park Homeowners Association, Inc	"B"

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS**

**FOR**

**THE RESIDENCES AT LULLWATER PARK**

THIS DECLARATION is made on the date set forth below by Viscaya Briarchiff, LLC, a Georgia limited liability company ("Declarant"),

**WITNESSETH**

WHEREAS, Declarant is the owner of the real property described in Article II, Section 1 of this Declaration,

WHEREAS, Declarant desires to subject the real property described in Article II, Section 1 to the provisions of this Declaration to create a residential community of attached townhomes and one (1) single family home and to provide for the subjecting of other real property to the provisions of this Declaration, and

NOW, THEREFORE, Declarant declares that, subject to the provisions of Article XVII, Section 2 of this Declaration, the real property described in Article II, Section 1 of this Declaration, including the improvements constructed or to be constructed thereon, is subjected to the provisions of this Declaration, and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Declaration, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall be for the benefit of all owners of the property subject to this Declaration

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

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

## ARTICLE I

### Definitions

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

(1) "Architectural Control Committee" or "ACC" shall mean the committee established to exercise the architectural review powers set forth in Article VIII hereof, which shall be the Board of Directors of the Association unless by resolution the Board appoints a separate Architectural Control Committee

(2) "Area of Common Responsibility" shall mean the Common Property, together with those areas, if any, which by the terms of this Declaration or by agreement with any other Person become the Association's responsibility to maintain

(3) "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of The Residences At Lullwater Park Homeowners Association, Inc , which has been filed with the Secretary of State of Georgia

(4) "Association" shall mean The Residences At Lullwater Park Homeowners Association, Inc , a Georgia non-profit corporation, its successors and assigns

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

(6) "Bylaws" shall mean the Bylaws of The Residences At Lullwater Park Homeowners Association, Inc , attached to this Declaration as Exhibit "B" and incorporated herein by this reference

(7) "Common Expenses" shall mean the expenses incurred or anticipated to be incurred by the Association for the general benefit of the Community, including, but not limited to, the costs of the common water and sewer bills and those expenses incurred for maintaining, repairing, replacing, and operating the Common Property and Area of Common Responsibility

(8) "Common Property" shall mean any and all real and personal property and easements and other interests, together with the facilities and improvements located on the Community less and except all real and personal property designated on the Plat as Lots, which is now or in the future owned by the Association, including but not limited to, all courtyards between Lots, landscape and grassy areas not included in a Lot, all roads, sidewalks and other concrete and paved areas not included in a Lot, and all personal property of the Association in any of these areas

(9) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "A" attached hereto and incorporated herein by this reference, and such additions hereto as may be made by Declarant or the Association by Supplementary Declaration of other real property

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

(11) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing on the Community Such standard may be more specifically determined by the

Board and the ACC This determination however, must be consistent with the Community-Wide Standard originally established by Declarant

(12) "Declarant" shall mean and refer to Viscaya Briarcliff, LLC, a Georgia limited liability company, and such of its successors-in-title who shall be designated as the "Declarant" in the deed of transfer by which such successors-in-title shall so acquire its interest in such real property, or by written assignment of Declarant rights in an instrument recorded in the DeKalb County, Georgia records In all events there shall only be one (1) "Declarant" at any one time, in no event shall more than one (1) Person have the right to exercise the power and authority of the "Declarant" at any one time

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

(14) "Effective Date" shall mean the date that this Declaration is recorded in the DeKalb County, Georgia land records

(15) "Exclusive Common Property" shall refer to that portion of the Common Property which is reserved for the exclusive use of the Owner or Occupant of one (1) Lot as more particularly set forth in this Declaration

(16) "Lot" shall mean any plot of land on the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family residence site as shown on the Survey as it may be amended or revised from time to time Each Lot consists of a Lot and all improvements thereon, including but not limited to, a residence, the stairway serving the residence, a garage, and a deck

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

(18) "Mortgagee" or "Mortgage Holder" shall mean the holder of a Mortgage

(19) "Occupant" shall mean any Person occupying all or any portion of a Lot for more than thirty (30) days, either consecutive or nonconsecutive, in any twelve (12) month period, regardless of whether such Person is a tenant or the Owner of such property

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

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

(22) "Supplementary Declaration" shall mean an amendment or supplement to this Declaration that subjects additional property to this Declaration or imposes additional restrictions and obligations on the property, or both

(23) "Survey" shall mean the plat or plats for The Residences At Lullwater Park, as amended, recorded in DeKalb County, Georgia records The Survey is incorporated herein by reference as fully as if the same were set forth in its entirety herein

(24) "Total Association Vote" shall mean all of the votes attributable to members of the Association (including votes of Declarant), and the consent of Declarant so long as Declarant owns any property for development and/or sale in the Community

## ARTICLE II

### Property Subject to this Declaration, Conveyance and Partition of Common Property

Section 1 Property Hereby Subjected to this Declaration The real property described in Exhibit "A" attached hereto and by this reference made a part hereof is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration

Section 2 Other Property Only the real property described in Section 1 of this Article II is made subject to this Declaration. However, by one (1) or more Supplementary Declarations, other real property may be subjected to this Declaration.

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

Section 4 Partition of Common Property The Common Property shall remain undivided, and no Owner or any other Person, but excluding Declarant, shall bring any action for partition or division of the whole or any part of the Common Property without the written consent of all Owners and all holders of all Mortgages encumbering any portion of the Community.

Section 5 Exclusive Common Property Certain portions of the Common Property may be designated on the Survey as Exclusive Common Property. The driveway and apron serving one (1) Lot leading into the garages of the residences located on that Lot shall be Exclusive Common Property. The decks and stairways adjoining an individual residence shall be Exclusive Common Property.

(a) The Association's Board of Directors, without need for a membership vote, is hereby authorized to assign and to reassign Exclusive Common Property and Common Property parking spaces not previously assigned as Exclusive Common Property in accordance with this Section. Common Property parking spaces not previously assigned as an Exclusive Common Property may be so assigned and an Exclusive Common Property may be reassigned by the Board, without need for a vote of the Association, upon written application to the Association by the Lot Owner or Owners for whose exclusive use such Common Property parking spaces is requested or whose use of the Exclusive Common Property previously assigned is directly affected. Upon such application, the Association shall prepare and execute an amendment to the Declaration assigning the Common Property parking spaces as an Exclusive Common Property or reassigning the Exclusive Common Property, which amendment shall be executed by the Owner or Owners making such application. For so long as Declarant owns a Lot primarily for the purpose of sale, an amendment to assign a Common Property, not previously assigned as an Exclusive Common Property shall be executed by the officers of the Association, if the request is made by Declarant. The Board has the right to approve or disapprove any such request made by any Person other than Declarant.



(b) For so long as Declarant owns any Lot primarily for the purpose of sale, Declarant shall have the right to sell to Lot Owners one (1) or more parking spaces to be assigned as Exclusive Common Property pursuant to subsections (a) and (b) above. The proceeds of the sale of parking spaces as Exclusive Common Property shall belong to Declarant

### ARTICLE III

#### Association Membership and Voting Rights

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

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

### ARTICLE IV

#### Association Rights and Restrictions; Variances

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE V

### Assessments

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

Section 2 Creation of the Lien and Personal Obligation for Assessments Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association (a) annual assessments or charges, (b) special assessments and administrative fees, such assessments and fees to be established and collected as hereinafter provided, and

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

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

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

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

The common assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total budgeted operating costs of the Association. The Board shall cause the proposed budget and assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year (or at least thirty (30) days prior to the due date of the first installment in the case of the initial budget). The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

**Section 4**      Special Assessments      In addition to the other assessments authorized herein, the Association may levy special assessments and administrative fees to cover unbudgeted expenses or expenses in excess of those budgeted if approved by a majority of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

**Section 5**      Lien for Assessments      All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association and the Association shall be entitled to file such a lien in the land records of DeKalb County, Georgia. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem

taxes and (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of DeKalb County, Georgia and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument

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

**Section 6**      Effect of Nonpayment of Assessments Remedies of the Association Any assessments, fees or installments thereof which are not paid when due shall be delinquent Any assessment, fee, 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 which shall not exceed fifteen percent (15%) of the assessment payment The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include interest not to exceed the maximum rate permitted by law per annum on the principal amount due from the date first due and payable, all late charges, all costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same In addition to the other remedies provided herein, the Association shall have the right to suspend the voting rights of a Lot Owner for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid

In the event that any assessment or other charge is delinquent for sixty (60) days and the amount owed is in excess of the dollar amount equal to three (3) times the monthly assessment owed by a Lot Owner, then, in addition to all other rights provided herein, upon no less than ten (10) days written notice, the Association shall have the right to suspend any utility or services to the Lot paid for as a Common Expense by the Association Any costs incurred by the Association in discontinuing and/or reconnecting any utility or service, including reasonable attorney's fees, shall be an assessment against the Lot The utility or service shall not be required to be restored until all sums owed the Association are paid in full, at which time the Association shall make arrangements for restoration of the utility or service A Lot Owner whose utility or service has been suspended hereunder shall not be entitled to use any such utility or service from any source, and any such unauthorized use shall be considered a theft of services under O C G A Section 16-8-5

No Owner may waive or otherwise exempt himself or herself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot The obligation to pay assessments is a separate and independent covenant in the part of each Owner, and no diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority

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

**Section 7** Date of Commencement of Assessments Assessments shall commence as to a Lot on the first day of the month following the conveyance of the Lot to a Person other than Declarant. Notwithstanding anything to the contrary stated herein, Declarant shall not be responsible for the payment of any type of assessment on any Lot, except that assessments shall commence on Lots containing occupied residences (but excluding those Lots containing model homes or a sales center) that are owned by Declarant on the first day of the month following the occupancy of the residence located on the Lot. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual common assessment shall be adjusted according to the number of months then remaining in that fiscal year.

**Section 8** Specific Assessments The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article V of the Bylaws and the costs of maintenance performed by the Association for which the Owner is responsible for under Article XII, Sections 1 and 2 of this Declaration shall be specific assessments. The Board may also specifically assess Owners for the following Association expenses:

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

**Section 9** Budget Deficits During Declarant Control During the Declarant Control Period, 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 annual, special and specific assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of Declarant or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

**Section 10** Working Capital Fund Declarant, on behalf of the Association, shall establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services for the Association. A non-refundable contribution to the working capital fund of the Association shall be paid to the Association by the purchaser of a Lot at the closing of the initial sale of a Lot from Declarant to an Owner in the amount of One Thousand and No/100 Dollars (\$1,000). At the closing of the resale of a Lot from an Owner to a new purchaser, a contribution in the amount of Five Hundred and No/100 Dollars (\$500) shall be paid to the Association. In the event such non-refundable contribution to the working capital fund of the Association is not paid in accordance with this Section 10, such amount shall be a specific assessment against such Lot.

## ARTICLE VI

Insurance and Casualty Losses

Section 1 Insurance on Common Property The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and, at the option of the Board of Directors, shall have the authority, but not the obligation, to obtain insurance for the residence and other improvements on Lots. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

The Board shall obtain a public liability policy applicable to the Common Property 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 and No/100 Dollars (\$1,000,000.00).

Premiums for all insurance obtained by the Association shall be a Common Expense of the Association. The policies may contain a reasonable deductible, and the deductible amount shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, except as otherwise provided above and shall be governed by the provisions set forth below:

- (a) All policies shall be written with a company authorized to do business in Georgia.
- (b) All policies on the Common Property shall be for the benefit of the Association and its members. Any policies covering improvements on Lots shall be for the benefit of the Owners and their mortgagees, as their interests may appear.
- (c) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors, provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations, if any, related thereto.
- (d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
- (e) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of who must be in the real estate industry and familiar with construction in the county where the Community is located.
- (f) The deductible amount per occurrence for coverage shall not exceed Five Thousand and No/100 Dollars (\$5,000.00).

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

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

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash,

(iii) a statement that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners,

(iv) a statement that no policy may be canceled, subjected to nonrenewal, invalidated, or suspended on account of any default or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the default or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee,

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration, and

(vi) a statement that no policy may be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days' prior written notice to the Association

In addition to the other insurance required by this Article VI, Section 1, the Board shall obtain directors' and officers' liability coverage, 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. The amount of fidelity coverage shall be determined in the directors' best business judgment, but if reasonably available, shall not be less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

Section 2 Individual Insurance If the Association does not maintain insurance on the residence and other improvements on the Lots, each Owner, by virtue of taking title to a Lot subject to the terms of this Declaration, covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. If reasonably available, the casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage on his or her Lots and structures constructed thereon meeting the same requirements as set forth in Article VI, Sections 1(g)(i) and 1(g)(iii) for insurance on the Common Property. The deductible amount per occurrence for coverage obtained by an Owner shall not exceed Five Thousand and No/100 Dollars (\$5,000 00). The policies required hereunder shall be in effect at all times. Owners shall furnish a copy of his/her proforma or

insurance policy at the closing of the Lot, and upon request by the Association, an Owner shall furnish a copy of his/her insurance policy or policies to the Board. In the event that any Owner fails to obtain and maintain insurance, as required by this Section, the Association may purchase such insurance on behalf of the Owner and specifically assess the cost thereof to the Owner pursuant to Article V, Section 8 of this Declaration, to be collected in the manner provided for collection of Common Expenses under this Declaration.

Each Owner further covenants and agrees that in the event of damage and destruction of structures on his Lot, the Owner shall proceed promptly to repair and/or to reconstruct, as applicable, the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article VIII of this Declaration, unless a determination not to rebuild is made in accordance with Section 4 of this Article VI. The Owner shall pay any costs of repair or reconstruction that is not covered by insurance proceeds. In the event that the structure is totally destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

**Section 3**      Insurance Deductibles    In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the Person or Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Lot or a Lot and the Common Property, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in accordance with the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Lot separately or to each occurrence, each Owner shall be responsible for paying the deductible pertaining to his or her Lot, if any. If any Owner or Owners fail to pay the deductible when required under this Article VI, Section 3, then the Association can pay the deductible and assess the cost to the Owner or Owners pursuant to Article V, Section 8 of this Declaration.

**Section 4**      Casualty Losses    In the event of damage to or destruction of all or any part of the Community as a result of fire or other casualty, unless eighty percent (80%) of the Total Association Vote other than Declarant, including the Owner or Owners of the damaged Lot or Lots, and the Declarant vote not to proceed with the reconstruction and repair of the structure, the Board of Directors or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. The Declarant's vote is required hereunder only as long as the Declarant has the right to appoint and remove directors and officers of the Association as provided in Article III, Section 2 of the Bylaws. In the event of substantial damage or destruction, each institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Owner with respect to the distribution of proceeds to any such Lot.

(a)      Cost Estimates    Immediately after a fire or other casualty causing damage to the Community, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Lot) to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b)      Source and Allocation of Proceeds    If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board of Directors, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Owners without the necessity of a vote of the members or compliance with Article V, Section 4 above. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board of Directors.



(c) Plans and Specifications Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Community was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board of Directors. To the extent insurance proceeds are available, the Association may reconstruct or repair owner improvements damaged as a result of fire or other casualty.

(d) Encroachments Encroachments upon or in favor of Lots that may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Community was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(e) Construction Fund The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against the Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Article VI, Section 4(e) to be disbursed by the Association in appropriate progress payment to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board of Directors.

#### Article VII

##### Condemnation

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after the taking, Owners holding at least eighty percent (80%) of the Total Association Vote other than Declarant and Declarant otherwise agree, the Association shall restore or replace the improvements taken on the remaining land included in the Common Property to the extent lands are available. Declarant's vote is required hereunder only as long as the Declarant Control Period. The provisions of Article VI, Section 4, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

#### Article VIII

##### Architectural Standards

Section 1 General Except as otherwise provided herein, no Owner, Occupant, or any other Person may, without first obtaining the written approval of the Architectural Control Committee ("ACC")

- (a) make any encroachment onto the Common Property,
- (b) construct any improvement on a Lot,
- (c) make any exterior change, alteration, modification or construction on a Lot (including painting, regarding, altering or replacing any mailbox (if any), making any landscaping modifications), and
- (d) erect, place or post any object, sign, clothesline, playground equipment, light, storm door or window, artificial vegetation, exterior sculpture, fountains, flags or other thing on the exterior of the Lot, on the residence on the Lot, in any windows of the residence, or on any Common Property

The standard for approval of such improvements shall include, but not be limited to (1) aesthetic considerations, (2) materials to be used, (3) compliance with the Community-Wide Standard, this Declaration, or the design standards which may be adopted by the Board or ACC, (4) harmony with the external design of the existing buildings, Lots and structures, and the location in relation to surrounding structures and topography, and (5) any other matters deemed to be relevant or appropriate by the Board or ACC.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. The ACC or its designated representative (including, but not limited to the architect of the original floor plans of a residence located on a Lot) shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction which is not in conformance with approved plans. The Board or the ACC may publish written architectural standards for exterior and Common Property alterations or additions, and any request in substantial compliance therewith shall be approved, provided, however, each such requested change shall be in harmony with the external design of the existing buildings and Lots and the location in relation to surrounding structures and topography of the vicinity.

The ACC or the Board, subject to this Article VIII, Section 1, may allow such encroachments on the Common Property as it deems acceptable.

If the ACC or its designated representative fails to approve or to disapprove such application within forty-five (45) days after the application and such information as the ACC may reasonably require shall have been submitted, its approval will not be required and this Section will be deemed complied with, provided, however, even if the requirements of this Section are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the Bylaws, the design standards, the Association's rules and regulations, or applicable zoning ordinances.

This Article shall not apply to the activity of Declarant, nor to constructions or improvements or modifications to the Common Property by or on behalf of the Association.

## Section 2 Architectural Control Committee

(a) During Development and Sale During the time in which the dwellings on Lots are being constructed and all Lots have not been sold and closed, there shall be no Architectural Control Committee ("ACC") and all encroachments onto the Common Property and any exterior change, alteration or construction (including painting any improvement and landscaping) and any erection, placement or posting of any object, sign, light, flag or thing on any Lot or in any window (except window treatments as provided herein), must receive the prior written approval of Declarant. Granting or withholding such approval shall be within the sole discretion of Declarant.

(b) After Development and Sale After such time as dwellings have been constructed on all Lots and all Lots have been sold and closed, the ACC shall consist of the Board unless the Board delegates to other Persons the authority to serve on the ACC. The ACC shall have the authority to select and employ professional consultants to assist it in discharging its duties, the cost of such consultants to be paid by the Owner of any Lot for which plans and specifications have been submitted for approval. The Owner of any such Lot shall be responsible for paying the full costs of each review, whether or not submitted plans and specifications are approved by the ACC, and the ACC may require payment of all such costs prior to approval of plans and specifications. The Association, by and through the ACC, also may charge

reasonable fees to cover the cost of review or inspections performed hereunder, and any such fees shall be published in the design standards

Section 3 Alterations to the Interior of a Residence Located on a Lot Except as provided herein, no Owner or Occupant shall make any changes, alterations, modification or construction to the interior of a residence located on a Lot that involves connecting to a pipe, line, conduit and/or other apparatus for access to common utilities, or places an excessive load on any structural or load bearing portions of a residence or otherwise negatively impacts the structural integrity of the residence and any adjoining residences without first obtaining the prior written approval of the ACC. Such approval shall not be granted by the ACC unless the Owner has presented to the ACC a report and/or drawing prepared by a licensed structural engineer showing that compensating measures will be taken to ensure the structural integrity of the residence and any adjoining residences. All building code requirements must be complied with and necessary permits and approvals for the proposed change, alteration, modification or construction shall be secured by an Owner at Owner's sole expense.

Section 4 Condition of Approval As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition, or alteration. In the discretion of the Board or the ACC, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

Section 5 Limitation of Liability Review and approval of any application pursuant to this Article VIII may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board nor the ACC shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Association, the Board, the ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design or quality of approved construction or modifications to any Lot.

Section 6 No Waiver of Future Approvals Each Owner acknowledges that the members of the Board and the ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the Board or the ACC, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 7 Enforcement Any construction, alteration, or other work done in violation of this Article VIII, the Declaration, the Bylaws or the design standards shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the violating Lot.

In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Article VIII and its decisions or those of the ACC. Furthermore, the Board shall have

the authority to record in the DeKalb County land records notices of violation of the provisions of this Article VIII

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

**Section 8** Commencement of Construction All improvements approved by the ACC hereunder must be commenced within six (6) months from the date of approval. If not commenced within six (6) months from the date of such approval, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. All work approved by the ACC hereunder shall be completed within three (3) months of commencement, unless otherwise agreed in writing by the ACC.

**Section 9** Approval of Contractors, Landscapers and Architects Any contractor, landscaper or architect, prior to performing any work on any Lot must first be approved by Declarant or the ACC if there no longer is a Declarant, as to financial stability, building, landscaping or design experience and ability to build, landscape or design structures or grounds of the class and type of those which are to be built on the Community. Such approval may be granted or withheld in the sole and uncontrolled discretion of the ACC. Moreover, no person shall be approved as a contractor, landscaper or architect unless such Person obtains his income primarily from construction, landscaping or design of the type which the contractor, landscaper or architect is to perform upon the Lot, and has provided Declarant or ACC, as applicable, evidence of public liability insurance and worker's compensation insurance.

## ARTICLE IX

### Use Restrictions and Rules

**Section 1** General This Article IX, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants of Lots. These use restrictions may only be amended in the manner provided in Article XVI, Section 1, regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, adopt, modify, or delete rules and regulations applicable to the Community. These rules shall be distributed to all Owners prior to the date that they are to become effective and after distribution shall be binding upon all Owners and Occupants of Lots until and unless overruled, canceled, or modified, by Declarant (until such time as the Declarant Control Period expires) or by a majority of the Total Association Vote, at a regular or special meeting. Notwithstanding the above, until the expiration of the Declarant Control Period, no rules and regulations which affect Declarant may be adopted, modified, or deleted without the written consent of Declarant.

**Section 2** Residential Use Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing in a residence on a Lot may conduct such ancillary business activities within the residence so long as

(a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the residence,

(b) the business activity does not involve visitation of the residence by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential residence without business activity.

- (c) the business activity conforms to all zoning requirements for the Community,
- (d) the business activity does not increase traffic in the Community in excess of what would normally be expected for residences in the Community without business activity (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services),
- (e) the business activity does not increase any insurance premium paid by the Association, if any, or otherwise negatively affect the Association's ability to obtain insurance coverage,
- (f) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, and does not otherwise violate any other provision of the Association's legal instruments, as determined in the Board's discretion, and
- (g) the business activity does not result in a materially greater use of Common Property facilities or Association services

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

**Section 3** Number of Occupants The maximum number of occupants in a dwelling on a Lot shall be limited to two (2) people per bedroom in the dwelling. "Occupancy," for purposes hereof, shall be defined as staying overnight in a dwelling for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year. This occupancy restriction shall not apply to require the removal of any person lawfully occupying a dwelling on the Effective Date hereof. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto

If an Owner of a Lot is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the person(s) who will occupy the dwelling on the Lot. The designated person(s) to occupy the dwelling may not be changed more frequently than once every six (6) months

**Section 4** Use of Common Property There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on any part of the Common Property without the prior written consent of the Association, except as specifically provided herein

With the prior written approval of the Board of Directors, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Property for use for a period of time as set by the Board. The Board of Directors shall be permitted to charge such Owner or Owners reasonable fees, as determined in the Board's sole discretion, in connection with the reservation and use of any portion of the Common Property. Any such Owner or Owners who reserve a portion of the Common Property as provided herein shall assume, on behalf of himself/herself/themselves and his/her/their guests, Occupants and family, all risks associated with the use of the Common Property and all liability for any damage or injury to

any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

**Section 5**      Occupants Bound All provisions of the Declaration, Bylaws and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to Occupants even though Occupants are not specifically mentioned. The Owner shall be responsible for ensuring that an Occupant, and the guests, invitees and licensees of an Owner or Occupant strictly comply with all provisions of the Declaration, Bylaws, and any rules and regulations adopted by the Board of Directors. Fines may be levied against Owners or Occupants. If a fine is levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.

**Section 6**      Signs Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected or placed by an Owner, Occupant or other Person, or permitted to remain on the Community without the prior written consent of the Board or its designee, except that one (1) professional security sign not to exceed four inches (4") by four inches (4") in size may be displayed from within a residence on a Lot, and one (1) professionally lettered "For Rent" or "For Sale" sign not to exceed two feet (2') by two feet (2') in size may be displayed from within a residence being offered for sale or for lease. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. The Board also shall have the authority to adopt regulations permitting temporary signs on Lots announcing births, birthdays or other events for limited periods of time. This Section 6 shall not apply to Declarant.

**Section 7**      Vehicles and Parking Each Lot includes a two-car garage. The driveway and apron attached to and serving each Lot is Exclusive Common Property assigned to the Lot to which it is attached. Owners' cars must be parked in garages, provided that, when the garage is fully occupied by two (2) cars, the Exclusive Common Property driveway or apron can be utilized to park up to two (2) additional cars so long as the cars fit entirely within the Exclusive Common Property. The Board may adopt reasonable rules limiting the number of vehicles that may be parked at the Community. Notwithstanding the foregoing, an Owner or Occupant of a Lot shall be permitted to park the maximum number of cars or similarly sized motor vehicles that can be parked in a garage according to its design capacity and on the Exclusive Common Property reserved for the exclusive use of the Owner or Occupant of a Lot. Parking may also be permitted on other areas authorized in writing by the Board. Guests of an Owner or Occupant may temporarily park their vehicle(s) in areas designated for guest parking on the Common Property in accordance with this Article IX, Section 7. No Owner or Occupant shall park in such designated areas and may be subject to towing in accordance with this Article IX, Section 7 if in violation of this provision.

Disabled and stored vehicles are prohibited from being parked on the Community, except in garages. For purposes of this Article IX, Section 7, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Community for fourteen (14) consecutive days or longer without being driven and without prior written Board permission.

All pick up trucks and motorcycles must be parked in garages and shall not be parked on the driveway, apron or on landscaped areas within the Exclusive Common Property or on the Common Property, except as further provided herein. Furthermore, boats, trailers, buses, panel trucks, trucks with a load capacity of one (1) ton or more, vans (excluding vans used by handicapped persons, mini-vans or utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), recreational vehicles (RV's and motor homes), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors other than

Sheriff's, Marshall's or police officer's vehicles marked as such, are also prohibited from being parked on the driveway, apron or on landscaped areas within the Exclusive Common Property or on the Community, except in garages. Notwithstanding the foregoing, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the Community during normal business hours for the purpose of serving any Lot or the Common Property, provided, however, no such vehicle shall remain on the Lot or the Common Property overnight for any purpose unless prior written consent of the Board is first obtained.

If any vehicle is parked on any portion of the Community in violation of this Article IX, Section 7 or in violation of the Association's rules and regulations, the Board 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 or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Community stating the name and telephone number of the person or entity which will do the towing or booting. 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 vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Lot, residence or Exclusive Common Property, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed or booted in accordance with this Article IX, Section 7, 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. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. 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 or boot.

**Section 8** Garages It is prohibited for an Owner or Occupant of a Lot that includes a garage to convert such garage to any other use. No Owner or Occupant of a Lot that includes a garage shall park his or her car or other motor vehicle on any portion of the Community, other than in the garage, unless the maximum number of cars or similarly sized motor vehicles which can be parked in the garage according to its design capacity are already parked in said garage. In the event the maximum number of cars is parked in the garage, an Owner or Occupant may park cars on the Exclusive Common Property driveway or apron serving that Lot, so long as such cars do not obstruct the roadway whatsoever. Garage doors shall remain closed at all times, except for necessary use, ingress, and egress. All garages shall be maintained in such a manner that parking for the maximum number of motor vehicles for which it was originally designed to hold is allowed and possible.

**Section 9** Yard and Garage Sales No garage sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Community without prior written Board consent. If so permitted, any such activities shall be subject to all reasonable conditions that the Board may impose.

**Section 10** Animals and Pets No Owner or Occupant may keep any animals on any portion of the Community, except as expressly permitted in this subparagraph. An Owner or Occupant may keep no more than a total of two (2) dogs and/or cats per Lot and a reasonable number of other generally recognized household pets, as determined in the Board's sole discretion, weighing less than two (2) pounds each (including by way of illustration, but not limitation, fish, gerbils and small birds).

No Owner or Occupant may keep, breed, or maintain any pet for any commercial purpose, and no structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of

the Common Property, including Exclusive Common Property, without prior written ACC approval. No pets are allowed on any portion of the Common Property, except for the designated dog walk area, if any, provided, however, an Owner or Occupant may walk a pet across the Common Property to reach such dog walk area, if any, or to enter or exit the Community property. Notwithstanding the foregoing, pets must be kept on a leash and be under the physical control of a responsible person at all times while on the Common Property. Feces left upon the Common Property by pets must be immediately removed by the owner of the pet or the person responsible for the pet.

No potbellied pigs, snakes, pit bulldogs, rottweillers, Doberman pinschers, or other animals determined in the Board's sole discretion to be dangerous may be brought onto or kept on the Community at any time. The Board may require that any pet which, in the Board's opinion, endangers the health of any Owner or Occupant or creates a nuisance or unreasonable disturbance, be permanently removed from the Community upon seven (7) days written notice. If the Owner or Occupant fails to do so, the Board may remove the pet. Any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any community member may be removed by the Board without prior notice to the pet's owner.

Any Owner or Occupant who keeps or maintains any pet upon the Community shall be deemed to have agreed to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Community.

**Section 11 Prohibition of Damage, Nuisance and Noise** The residences located on Lots in the Community are built in close proximity to one another, resulting in the sharing of common walls. As a result, noise and vibration may be detectable between residences and inside a residence from noise and vibrations emanating from the Common Property. Therefore, an Owner or Occupant shall not conduct activities within a residence or on any portion of the Community in a manner that interferes with or causes disruption to the use and quiet enjoyment of another residence by its respective Owner and Occupant, including, without limitation, the use of stereo speakers or equipment that will, in the reasonable discretion of the Board of Directors, interfere with the rights, comfort or convenience of other Owners or Occupants. Furthermore, without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier or other sound device, except for devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law. Notwithstanding the foregoing, any siren or device for security purposes shall contain a device that causes it to automatically shut off within fifteen (15) minutes.

It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkept condition on his or her Lot. No Lot on the Community shall be used, in whole or in part, for the storage of any property or thing that will cause a Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye. Moreover, no substance, thing, or material may be kept on any portion of the Community that will discharge foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the surrounding property. Furthermore, no noxious, destructive or offensive activity shall not be conducted within any portion of the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property on the Community. No Owner or Occupant shall maintain any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community.

No damage to or waste of the Common Property, or any part thereof, shall be permitted by any Owner or member of his or her family or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting



from any such damage or waste caused by such Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot

Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights

Section 12 Unsightly or Unkept Conditions The pursuit of hobbies or other activities which might tend to cause disorderly, unsightly, or unkept conditions, including without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, shall not be pursued or undertaken on any part of the Community. Clothing, clotheslines, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the residence. Only appropriate outdoor items stored in accordance with applicable state and local laws and ordinances, such as neatly stacked firewood, patio furniture and grills, may be kept on the deck serving the Lot

Section 13 Window Treatments No foil or other reflective materials shall be used on any window for sunscreens, blinds, shades or for any other purpose. The side of any window treatment that is visible from the outside of a residence located on a Lot shall be white or off-white in color. Bed sheets and/or towels shall not be used as window treatments.

Section 14 Air Conditioning Units Except as may be permitted by written consent of the ACC, no window air conditioning units may be installed. Unless otherwise placed on a Lot by Declarant, condensing units for air conditioners shall only be located either on the roof of the residence or at grade level upon a Lot and shall be screened so as to be concealed from view of neighboring Lots, Common Property and all streets which border the Lot.

Section 15 Antennas and Satellite Dishes Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Community, provided, however, that the Association shall have the right to erect, construct and maintain such devices. The following shall apply to all Owners:

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

(b) No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one (1) meter in diameter shall be placed, allowed or maintained upon the Community.

(c) DBS and MMDS satellite dishes or antennas one (1) meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, both as may be amended from time to time.

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

Section 16 Fences No fence or fencing-type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Declarant or ACC.

Section 17 Recreational Areas Any recreational area or other areas or equipment located on the Common Property shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof. No equipment (including basketball goals) shall be erected, installed or placed on any Lot without the prior written consent of the ACC.

Section 18 Trash Disposal No garbage or trash shall be placed on the Common Property or the Exclusive Common Property temporarily or otherwise, except as provided herein. Rubbish, trash and garbage shall be disposed of in appropriate sealed bags and placed in proper trash receptacles for collection. No Owner or Occupant shall be permitted to place any garbage can, recycling bin, trash bag or any other form of rubbish in the area located within the Common Property or the Exclusive Common Property, as designated by the Board, except within the twelve (12) hours preceding such Owner or Occupant's scheduled garbage or recycling pickup. All such garbage, trash and rubbish receptacles shall be removed from the area located within the Common Property or the Exclusive Common Property, as designated by the Board, within twelve (12) hours after such scheduled garbage or recycling pickup.

Section 19 Subdivision of Lot No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

Section 20 Outbuildings No structures of a temporary character such as tents, shacks, carports, barns, tool sheds, dog houses, cages or coops or other outbuilding shall be erected by any Owner or Occupant on any portion of the Community, at any time, other than by Declarant.

Section 21 Tree Removal No trees or shrubs on any portion of the Community shall be removed without the express written consent of the ACC.

Section 22 Firearms and Fireworks The display or discharge of firearms or fireworks on the Common Property is prohibited, provided, however, that the display of lawful firearms on the Common Property is permitted for the limited purpose of transporting the firearms across the Common Property to or from the Owner's Lot. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. The term "fireworks" shall include those items as listed in O C G A Section 25-10-1.

Section 23 Heating of Residences in Colder Months In order to prevent breakage of water pipes during colder months of the year resulting in damage to the Community, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the residence on Lots shall be maintained with the heat in an "on" position and at a minimum temperature setting of sixty (60) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two (32) degrees Fahrenheit or below. Owners and Occupants of Lots shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Owner or Occupant shall immediately inform the Association of this failure of the equipment and of the time needed to repair the equipment. All Owners and Occupants of Lots also shall be obligated to shut any and all cut-off valves for any and all outdoor spigots whenever the temperature is forecasted to or does reach thirty-two (32) degrees Fahrenheit or below. Notwithstanding any provision in this Declaration or in the Bylaws to the contrary, the Board of Directors, without a prior warning, demand or hearing, may fine any Owner or Occupant up to Five Hundred and No/100 Dollars (\$500.00) or may cause the water service to the violator's Lot to be discontinued for violation of this Article IX, Section 24, in addition to any other remedies of the

Association Any fine imposed pursuant to this Article IX, Section 24 shall be deemed an assessment against the Lot and may be collected in the same manner as provided herein for collection of assessments

Section 24 Abandoned Personal Property Personal property, except for personal property owned by the Association, is strictly prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property or on the rights-of-way located within the Community. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Property or on the rights-of-way located on the Community in violation of this Article IX, Section 25, then the Board may remove and either discard or store the personal property in a location which the Board may determine. If personal property is removed in accordance with this Article IX, Section 25, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

Section 25 Impairment of Residences and Easements An Owner shall do no act nor any work that will impair the structural soundness or integrity of any residence or impair any easement or other interest in real property, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners or Occupants.

Section 26 Lighting Except as may be permitted by the ACC, exterior lighting shall not be permitted except for (a) approved lighting as originally installed on a Lot, and (b) illumination for all exterior lighting shall be generated from clear light bulbs or such other light bulbs specified by the Association.

Section 27 Mailboxes Declarant may provide a mailbox or mail slot for each Lot. In the event Declarant provides a mailbox for each Lot and such mailbox is destroyed or damaged, it shall be replaced or restored by the Owner to its original appearance, unless prior approval is given by the ACC for a different mailbox.

Section 28 Decks Objects over forty-two (42) inches in height, hot tubs, grills, bicycles, laundry garments, towels and objects other than potted plants and patio furniture, except as may be authorized by the Board, shall not be placed on a deck. Objects shall not be permitted to hang over or be attached to any exterior deck or to otherwise protrude outside of the vertical plane formed by the exterior surface of the deck wall. Penetration of the surfaces of a deck wall or floor is prohibited. Enclosure of a deck is also prohibited. As used herein, "enclosure" shall mean the permanent enclosure of a deck into the heated and cooled space within the boundaries of a residence.

Section 29 Grilling The use of outdoor grills on any portion of the Community, including, without limitation, a deck, shall be governed by applicable state laws and local ordinances having jurisdiction over the Community.

Section 30 Fire Sprinkler System A fire sprinkler system may be initially installed in the four (4) story residences on a respective Lot and certain equipment related thereto may be located on the exterior portion of such residence on a Lot or Lots. The Owner of a Lot served by a sprinkler system shall maintain water service to the residence on the Lot at all times and shall not shut-off or terminate the water service without the written consent of the Board. The Owner of a Lot served by a sprinkler system shall also maintain electric service to the residence on the Lot at all times and shall not shut-off or terminate the electric service without the written consent of the Board. No items shall be secured to, placed, or hung on any portion of the sprinkler system, including all related lines or pipes, without the written consent of the Board. To the extent that the sprinkler system, or any utility line, pipe, wire, or conduit related thereto

serving any Lot shall lie wholly or partially within the boundaries of another Lot, such Lot shall be burdened with a non-exclusive easement for the use, installation, maintenance, repair and replacement of such sprinkler system, utility line, pipe, wire or conduit, such non-exclusive easement to be in favor of the Lots served by the same and the Association and Declarant. To the extent that any enclosed facility serving the sprinkler system (commonly known as a "dog house"), or any utility line, pipe, wire, or conduit related thereto shall lie wholly or partially within the boundaries of a Lot, such Lot shall be burdened with a non-exclusive easement for the use, installation, maintenance, repair and replacement of such enclosed facility, such non-exclusive easement to be in favor of the Lots served by the same and the Association and Declarant and the Owner of such Lot shall not take any action that interferes with operation of such enclosed facility. At the discretion of the Board, the Association may perform certain maintenance and/or replacement work on the sprinkler systems and shall have the right to enter a Lot, including the interior of a residence, to perform such maintenance and/or replacement work, provided, however, each Lot Owner shall take appropriate action on a regular basis to confirm that the sprinkler system serving such Owner's residence is in proper working order. Declarant and the Association make no representations or warranties with respect to the sprinkler system and shall not be liable for any costs and expenses related to the failure or improper operation of the sprinkler system.

## ARTICLE X

### Leasing

Section 1 Purpose In order to preserve the character of the Community as predominantly owner-occupied, the leasing of Lots shall be governed by the restrictions imposed by this Article. Except as provided herein, the leasing of Lots shall be prohibited. "Leasing," for the purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any Person other than the Owner. For purposes hereof, occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence shall not constitute Leasing hereunder.

Section 2 General Owners desiring to lease their Lots may do so only if they have applied for and received from the Board of Directors either a "Leasing Permit" or a "Hardship Leasing Permit." Such a permit, upon its issuance, will allow an Owner to lease his or her Lot provided that such Leasing is in strict accordance with the terms of the permit and this Paragraph. The Board of Directors shall have the authority to establish conditions as to the duration and use of such permits consistent with this Paragraph. All Leasing Permits and Hardship Leasing Permits shall be valid only as to a specific Owner and Lot and shall not be transferable between either Lots or Owners, but Leasing Permits shall be transferable to successors in title to the same Lot.

Section 3 Leasing Permits The request of a Person who has entered into a binding purchase and sale agreement to acquire a Lot or of an Owner for a Leasing Permit for a Lot shall be approved if current, outstanding Leasing Permits have not been issued for more than twenty-five percent (25%) of the total number of Lots in the Community. A Leasing Permit shall be automatically revoked upon the happening of any of the following events: (i) the failure of a purchaser to close on the acquisition of the Lot as contemplated in the purchase and sale agreement for any reason whatsoever, (ii) the failure of an Owner to lease his or her Lot within ninety (90) days of the Leasing Permit having been issued or the failure of a purchaser to lease his or her Lot within ninety (90) days after the date of the closing of the Lot, (iii) the failure of an Owner to have his or her Lot leased for any consecutive ninety (90) day period thereafter, (iv) the Lot is marketed for sale (including but, not limited to, listing the Lot or advertising the Lot for sale in any real estate listing service and/or publication, on any online electronic medium and on any newspaper, radio, television or any other medium for advertising) unless there is an existing binding lease agreement for the Lot at the time, (v) the transfer or conveyance of the Lot to a third party unless there is an existing binding lease agreement.

for the Lot at the time of the transfer or conveyance, or (vi) the occurrence of the date referenced in a written notification by the Owner to the Association that the Owner will, as of said date, no longer need the Leasing Permit. If current Leasing Permits have been issued for more than twenty-five percent (25%) of the total number of Lots, no additional Leasing Permits shall be issued (except for Hardship Leasing Permits) until the number of outstanding current Leasing Permits falls below ten percent (10%) of the total number of Lots in the Community. Owners and purchasers who have entered into a binding purchase and sale agreement to acquire a Lot who have been denied a Leasing Permit shall automatically be placed on a waiting list for a Leasing Permit and shall be issued the same if they so desire when the number of current outstanding Leasing Permits issued falls to twenty-five percent (25%) or less of the total number of Lots in the Community. The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the waiting list for a Leasing Permit. An Owner who has been placed on the waiting list for a Leasing Permit shall not transfer his or her position on the waiting list.

**Section 4**      Hardship Leasing Permits. If the failure to lease will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a Hardship Leasing Permit. The Board of Directors shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion after considering the following factors: (i) the nature, degree, and likely duration of the hardship, (ii) the harm, if any, which will result to the Community if the permit is approved, (iii) the number of Hardship Leasing Permits which have been issued to other Owners, (iv) the Owner's ability to cure the hardship, and (v) whether previous Hardship Leasing Permits have been issued to the Owner. A "hardship" as described herein shall include, but not be limited to the following situations: (A) an Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six (6) months from the date that the Lot was placed on the market, sell the Lot except at a price below the current appraised market value, after having made reasonable efforts to do so, (B) where the Owner dies and the Lot is being administered by his or her estate, and (C) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot. Hardship Leasing Permits shall be valid for a term not to exceed one (1) year. Owners may apply for additional Hardship Leasing Permits. Hardship Leasing Permits shall be automatically revoked if during the term of the permit, the Owner is approved for and receives a Leasing Permit.

**Section 5**      Leasing Provisions. Leasing which is authorized, pursuant to permit, hereunder shall be governed by the following provisions:

(a)      Notice. At least seven (7) days prior to entering into the lease of a Lot, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

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

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

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

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

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

(iii) Liability for Assessments When an Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of or prior to the due dates for monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

Section 6 Applicability of this Article X Notwithstanding the above, this Article X shall not apply to any leasing transaction entered into by Declarant (regardless of whether said lease is entered into prior to or after the expiration of the Declarant Control Period), the Association, or the holder of any first

Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, provided, however, the Declarant or holder of any first Mortgage which leases a Lot must still provide the name, address and telephone number of the Person to whom the Lot is being leased. Such parties shall be permitted to lease a Lot without first obtaining a permit in accordance with this Article X, and such Lots shall not be considered as being leased in determining the maximum number of Lots that may be leased in accordance with this Article X.

## ARTICLE XI

### Sale of Lots

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

In addition, a non-refundable contribution to the working capital fund of the Association shall be paid to the Association by the purchaser of a Lot at the closing of the initial sale of a Lot from Declarant to an Owner in the amount of One Thousand and No/100 Dollars (\$1,000) in accordance with Article V, Section 10 hereof. At the closing of the resale of a Lot from an Owner to a new purchaser, a contribution in the amount of Five Hundred and No/100 Dollars (\$500) shall be paid to the Association in accordance with Article V, Section 10 hereof.

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

## ARTICLE XII

### Maintenance

Section 1 Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall be deemed to include the following:

(a) maintenance, repair, and replacement subject to any insurance then in effect, of the Common Property, including, but not limited to, all Exclusive Common Property as defined herein, including but not limited to all decks constructed of wood and stairways adjoining the residences, and all Common Property landscaping and grassy areas not included in a Lot, all roads, sidewalks and other concrete and paved areas not included in a Lot, the entry feature, all retaining walls, irrigation systems, medians and islands,

(b) maintenance and repair of all water and sewer pipes or facilities which serve more than one (1) Lot to the extent that such pipes and facilities are not maintained by the Owner as set forth below or by public, private, or municipal utility companies, and:

(c) maintenance and repair of the following portions of the Lots:

(i) all roof surfaces, roof sheathing, roof flashings, portions of roofs decking material, all gutters and all downspouts,

(ii) all exterior building surfaces (including all brick, siding and columns, if any), all wrought iron and metal surfaces, and all decks constructed of wood and attached to a residence located on a Lot,

(iii) all exterior painting (including painting of all shutters, trim and columns, if any, and all wrought iron and metal surfaces), and

(iv) all lawn and landscape maintenance on a Lot and excluding the replacement of any dead trees, shrubs or other landscaping any where on the Lot

Specifically excluded from such Area of Common Responsibility shall be the following (1) HVAC or similar equipment located outside the residence, (2) all doors (including screen, storm and garage doors), hinges, frames, locks, and hardware which are part of the entry system, except the Association shall paint the exterior portion of the front door and the garage doors, (3) hoses, vents or water spigots contained in exterior walls of the residence, (4) lighting fixtures pertaining to a particular residence and being located outside an entryway or in a garage, if any, (5) window screens, frames, hardware and glass, (6) foundations and footings including waterproofing above and below grade, (7) pipes which serve only one Lot located within the Lot's boundaries or, if located in the front yard on the Lot, outside the Lot's boundaries, the portion of the pipe from the cutoff valve serving the Lot to the Lot itself, including the cutoff valve serving the Lot, (8) gas lanterns, if any, (9) any and all wrought iron and metal surfaces on stairs leading to a residence on a Lot, if any, and (10) all improvements made by any Owner or Occupant

Upon resolution of the Board of Directors and approval of a majority of the members present or represented by proxy at a duly constituted meeting of the members, the Association may assume responsibility for providing additional exterior maintenance upon Lot improvements. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association where the Board has determined that such maintenance would benefit all Owners

The foregoing maintenance shall be performed consistent with the Community-Wide Standard

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Area of Common Responsibility or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Article XII, Section 1 where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority

The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. Repairs to improvements on a Lot shall be completed only to the extent of being "paint-ready". Such repair and subsequent cleaning shall be performed based on a reasonableness standard and at the sole discretion of the Board of Directors. In performing its responsibilities



hereunder, the Association shall have the authority to delegate such Persons, agents, firms or corporations of its choice, such duties as are approved by the Board of Directors

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

In performing its responsibility hereunder, the Association shall have the authority to delegate to such Persons, agents, firms or corporations of its choice, such duties as are approved by the Board of Directors

Section 2 Owner's Responsibility Except as provided in Article XII, Section 1 above, all maintenance of the Lot shall be the responsibility of the Owner thereof. In addition, the Owner shall maintain all pipes, lines, ducts, conduits, or other apparatus which serve only the Lot located within the Lot's boundaries or, if located outside the Lot's boundaries, the portion of the pipe from the cutoff valve serving the Lot (including all gas, electricity, water, sewer and air conditioning pipes, lines, ducts, conduits and other apparatus and the cut off valves for same serving only the Lot). The Owner shall also maintain and repair all doors and windows on the Lot, except for the painting of the front door and the garage doors, which shall be the Association's responsibility. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto. Any maintenance which involves an exterior change, including, without limitation, landscaping and planting or repainting of the exterior of improvements in a different color, shall require prior approval of the Board or its designee pursuant to Article VIII of this Declaration.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Property by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Property) shall be performed at the sole expense and risk of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

Each Owner also shall be obligated

(a) To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Lots

(b) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible

(c) Not to make any alterations in the portions of the Lot which are to be maintained by the Association or to remove any portion thereof or to make any additions thereto or do anything with respect to the exterior or interior of the Lot which would or might jeopardize or impair the safety or soundness of any Lot without first obtaining the written consent of the Board of Directors of the Association and all Owners and Mortgagees or the Lots affected, nor shall any Owner impair any easement without first obtaining written consent of the Association and of the Owner or Owners and their Mortgagees for whose benefit such easement exists

(d) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall

have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, tenants or guests, with the cost thereof to be added to and become part of the Owner's next chargeable assessment

(e) To aid and assist the Association and its agents and employees as requested by the Association or its agents and employees, including, without limitation, removing, covering, shielding, or otherwise protecting any and all personal property in the areas to be maintained or repaired by the Association and its agents and employees in order for the Association and its agents and employees to conduct its maintenance and repair obligations on the Lots. The Association and its agents and employees shall not be liable for any injury, damage or loss to such personal property that is not removed, covered, shielded or otherwise protected by the Owner or Occupant of the Lot on which such personal property is located as requested by the Association or its agents and employees

Section 3 Failure to Maintain If the Board of Directors determines that (a) any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair or replacement of items of which he or she is responsible hereunder, or (b) that the need for maintenance, repair, or replacement which is in the Area of Common Responsibility is caused through the willful or negligent act of any Owner, his or her family, guests, lessees, or invitees, and is not covered or paid by insurance, in whole or in part, then, except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. In the case of (a) above where the Owner has not discharged his or her responsibility, unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair and diligently pursue completion thereof within ten (10) days. If the Board determines that an emergency exists or that an Owner has not complied with the demand given by the Association as herein provided, or that the need for maintenance or repair is in the Area of Common Responsibility as in the case of (b) above, then the Association may provide any such maintenance, repair or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be a lien against the Lot, and shall be collected as provided herein for the collection of assessments

#### Section 4 Measures Related to Insurance Coverage

(a) The Board of Directors, upon resolution, shall have the authority to require all or any Owner(s) to do any act or perform any work involving portions of the Community which are the maintenance responsibility of the Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage to the Community, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all Owners to turn off cutoff valves, which may now or hereafter be installed, during winter months for outside water spigots, requiring Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes, requiring Owners to install smoke detectors, requiring Owners to make improvements to the Owner's Lot, and such other measures as the Board may reasonably require so long as the cost of such work does not exceed Five Hundred and No/100 Dollars (\$500.00) per lot in any twelve (12) month period.

(b) In addition to, and not in limitation of, any other rights the Association may have, if any Owner does not comply with any reasonable requirement made by the Board of Directors pursuant to Article XII, Section 4(a) above, the Association, upon fifteen (15) days written notice (during which period the

Owner may perform the required act or work without further liability), may perform such required act or work at the Owner's sole cost and expense. Such cost shall be specifically assessed against the Owner and shall be added to and become a part of the assessment obligation of such Owner and shall become a lien against the Lot and shall be collected in the manner provided for collection of assessments. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to this Article XII. Section 4(b), including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot, except that access may be had at any time without notice in an emergency situation.

Section 5 Maintenance Standards and Interpretation The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary as the composition of the Board of Directors changes. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Article XII. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

Section 6 Mold Disclosure and Waiver Mold, mildew, fungi and microbiological organisms (collectively, "Mold"), are present in soil, air and elsewhere in the environment. Mold can proliferate in various environments, including, among others, damp areas such as bathrooms and within walls and partitions. Concerns have been expressed about the possible adverse effects on human health from exposure to Mold. Due to various reasons, including the varying sensitivities of different individuals to various types of Mold and other contaminants, as of the Effective Date, no state or federal standards regarding acceptable levels of exposure to Mold exist. According to the Consumer Product Safety Commission and the American Lung Association, some diseases or illnesses have been linked with biological pollutants in the indoor environment, including some forms of Mold. However, it is believed that many of these conditions may also have causes unrelated to the indoor environment. Therefore, as of the Effective Date, it is unknown how many potential health problems relate primarily or exclusively to indoor air quality or Mold. Each Owner, by taking title to a Lot, is advised that Declarant and the Association are not qualified and have not undertaken to evaluate all aspects of this very complex issue. Each Owner, by taking title to a Lot, acknowledges that Declarant and the Association have not performed any testing or evaluation of, and make no representations or warranties, express or implied, concerning the past, current or future presence or absence of Mold in the Lot or any other portion of the Community. Declarant and the Association recommend that each Owner, at the Owner's expense conduct its own investigation and consult with such experts as the Owner deems appropriate regarding the occurrence and effects of Mold, the potential sensitivity or special risk the Owner, his or her family members, and others individuals, who will occupy or use the Lot, and methods to reduce or limit Mold within the Lot.

When excessive moisture or water accumulates indoors, Mold growth can and will occur, particularly if the moisture problem remains unaddressed. There is no practical way to eliminate all mold in an indoor environment. The key to controlling indoor Mold growth is to control moisture. Each Owner, by taking title to a Lot, agrees to maintain the Lot in such a manner as to reduce the potential for increased Mold formation or growth, including, without limitation, keeping dryer and other vents and/or fans clear and functioning and preventing and repairing plumbing, window and other leaks and sources of moisture. Each Owner shall make periodic inspections of the Lot for the presence of Mold or conditions which may increase the ability of Mold to propagate within the Lot. If water or moisture is discovered in or around the improvements on a Lot (except when the water or moisture is part of the normal functioning of improvements and appliances such as showers, sinks, dishwashers, and other similar appliances and improvements), the Owner shall immediately seek to eliminate the source of the water or moisture. Failure to eliminate the source of moisture can result in additional damage and the growth of Mold. Declarant will not be responsible for damages, and each Owner, by taking title to a Lot, hereby waives all

rights to damages and subrogation of damages. Each Owner, by taking title to a Lot, agrees to indemnify Declarant and the Association and hold Declarant and the Association harmless from damages, including all cases of personal injury or property damage, caused by the presence of Mold and/or water or moisture in the Lot or other portions of the Community.

### ARTICLE XIII

#### Party Walls and Fences

Section 1 General Rules of Law to Apply Each wall or fence built as a part of the original construction on the Lots which shall serve and or separate any two (2) adjoining Lots shall constitute a party wall or party fence, as applicable. To the extent not inconsistent with the provisions of this Article XIII, Section 1, the general rules of law regarding the party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Owner shall make no modification to party wall construction that may compromise acoustic privacy and fire rating.

Section 2 Sharing of Repair and Maintenance The cost of reasonable repair and maintenance of a party wall or fence shall be shared equally by the Owners who make use of the wall or fence.

Section 3 Right to Contribution Runs with Land The right of any Owner to contribution from any other Owner under this Article XIII, shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

### ARTICLE XIV

#### Mortgage Provisions

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

Section 1 Notices of Action An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number) (therefore becoming an "eligible 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 an Owner of a Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days,

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

(d) any proposed action which would require the consent of a specified percentage of Mortgage holders

Section 2 Approval of Action Unless two-thirds (2/3) of the first Mortgagees or Owners other than Declarant give their consent, the Association shall not

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this Article XIV, Section 2(a)) other than personal property of the Association,

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner,

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Property (The issuance and amendment of architectural standards, procedures, rules, and regulations or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this Article XIV, Section 2(c),

(d) to maintain insurance, as required by this Declaration, or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property

Nothing contained in this Section 2 shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration for any of the acts set out in this Section 2

First Mortgagees, after written notice to the Association, may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Owner's policy, and first Mortgagees making such payments for taxes shall be entitled to immediate reimbursement from the Association

Section 3 No Priority No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property

Section 4 Notice to Association Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot

Section 5 Amendments by Board Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes

Section 6 VA/HUD Approval During the Declarant Control Period and so long as the Community is approved by HUD for insuring any Mortgage in the Community (as determined by consulting the current list of approved subdivisions regularly published by HUD and furnished to Mortgage companies)

or the VA for guaranteeing any Mortgage in the Community (as determined by telephone inquiry to VA), the following actions shall require the prior approval of the VA and/or HUD, as applicable annexation of additional property to the Community, dedication of Common Property to any public entity, mergers and consolidations, dissolution of the Association, mortgage of Common Property, and material amendment of the Declaration, the Bylaws, or the Articles of Incorporation of the Association

Section 7 Applicability of this Article Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Georgia law for any of the acts set out in this Article

Section 8 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request

## ARTICLE XV

### Easements

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

### Section 2 Easements for Use and Enjoyment

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

(i) the right, but not the obligation, of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his or her family, tenants, guests, and invitees,

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

(iii) the right of the Association to borrow money as may be set forth in the Bylaws, 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 any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Community (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the

exercise of any rights therein by the holder thereof 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 any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Community ),

(iv) the right of the Association to dedicate or grant permits, licenses or easements over, under, through and across the Common Property to governmental entities for public purposes, and

(v) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the affirmative vote of the Owners of at least two-thirds (2/3) of the Lots (other than Lots of Declarant so long as the consent of Declarant is required) and the consent of Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community)

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

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

It shall also be expressly permissible for any agent or employee of any utility company to enter onto a Lot to read any utility meter. In the event a meter on a Lot is in a gated or fenced in area, such area shall be universally keyed for the utility company(ies) or at the request of the Association, such Owner shall provide the Association with a key to such area, to be used by the utility company. Neither Declarant nor the Association shall be liable for any loss or damage due to its holding such key or use of such key for the purposes described above and each Owner shall indemnify and hold harmless Declarant, the Association and its officers and directors against any and all expenses, including attorneys fees reasonably incurred by or imposed upon Declarant, the Association or its officers or directors in connection with any action, suit or other proceeding (including settlement of such action, suit or proceeding) brought by the Owner or the Owner's family, tenants, guests, employees, invitees or licensees against Declarant, the Association, its officers or directors, arising out of or relating to its holdings or use of such key for the purposes described above.

**Section 4** Easement for Entry In addition to the right of the Board to exercise self-help as provided in the Association's legal instruments, the Board shall have the right, but not the obligation, to enter

upon any property on the Community for emergency, security, and safety reasons. This right may also be exercised by the agents of the Association, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition after request by the Board.

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

Section 6 Easement for Entry Features and Street Signs There is hereby reserved to Declarant, the Association, and the designee of either, an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of entry features and street signs 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 all entry features and the right to grade the land under and around the entry features.

Section 7 Easements for Access, Ingress, and Egress There is hereby reserved to each Lot Owner a perpetual non-exclusive easement over the Common Property roadways and walkways for the purpose of pedestrian and vehicular access, ingress, and egress between his/her Lot and any public roadway. Any conveyance or encumbrance of the Common Property shall be subject to this easement.

Section 8 Public in General The easements and rights created in this Article XV do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public, provided, however, that nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the DeKalb County, Georgia records. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Community), all or any portion of the Community which, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

## ARTICLE XVI

### General Provisions

Section 1 Amendment This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict, (b) if an 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 an amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable the lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration, or (d) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration. However, any such amendment shall not adversely affect the



title to any Owner's Lot unless the Owner consents to the amendment in writing. Further, until the Declarant Control Period expires, Declarant may unilaterally amend this Declaration for any other purpose whatsoever, provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner, nor shall it adversely affect title to any Lot without the consent of the affected Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least two-thirds (2/3) of the Total Association Vote. During the Declarant Control Period, any amendment to this Declaration shall require the written consent of Declarant. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified in the amendment. No provision of this Declaration which reserves, grants, or exempts special rights or exemptions to Declarant shall be amended without Declarant's prior written consent so long as Declarant owns any property in the Community primarily for development and/or sale.

**Section 2**      Duration      The covenants, restrictions and easements of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless fifty-one percent (51%) of the persons owning plots execute a document to terminate the covenants containing a legal description of the entire area affected by the covenant, a list of all owners affected by the covenant and a description of the covenant to be terminated or such other requirement as provided in O.C.G.A. § 44-5-60. A written instrument reflecting any termination must be recorded no sooner than, but within two years immediately preceding the beginning of a twenty (20) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Article XVI, Section 2.

**Section 3**      Security      The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community safer than they otherwise might be. **NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD OF DIRECTORS, DECLARANT, ANY SUCCESSOR DECLARANT, AND ACC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT OR THE ACC, IF ANY, MAY NOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, ASSAULT OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT**

INSURERS ALL OWNERS AND OCCUPANTS OF ANY LOT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS, AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES

Section 4 Dispute Resolution Any Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any director, or any agent of the Association. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing.

Section 5 Litigation

(a) All Owners hereby acknowledge and agree that the Association shall not be entitled to institute, fund, finance, or join in any legal action, suit, or claim against anyone on behalf of any or all of the Owners which is based on any alleged defect in any Lot or any damage allegedly sustained by any Owner by reason thereof, but rather, that all such actions shall be instituted by the Person(s) owning such Lots or allegedly sustaining such damage.

(b) All Owners hereby acknowledge and agree that no Owner shall be entitled to institute or join in any legal action against anyone which is based on any alleged defect in the Common Property, but rather, that all such actions shall be instituted by the Association on behalf of the Owners.

(c) No legal action, suit, or claim (including administrative claims) (hereinafter the "Claim") shall be commenced or prosecuted by the Association unless approved by a vote of the Owners as hereinafter provided. The Board shall prepare a budget of the total estimated cost of the Claim which shall be submitted to the Owners for a vote along with the estimate of the total cost of the Claim made by the attorney being retained by the Association for the Claim. No capital contribution made by an Owner in accordance with Article VI, Section 10 hereof or reserve account funds shall be used for funding the costs of the Claim. The proposed Claim, the budget, and any special assessment therefore, must all be approved by a vote of the Owners representing at least two-thirds (2/3) of the Total Association Vote. This Section shall not apply, however, to (i) actions involving imposition and collection of assessments as provided herein, (ii) actions brought by the Association to enforce the covenants in this Declaration (including, without limitation, the foreclosure of liens), (iii) proceedings involving challenges to ad valorem taxation, (iv) counterclaims brought by the Association in proceedings instituted against it, (v) any land-use or zoning proceedings, or (vi) actions brought by the Association for damages in magistrate court. This Section shall not be amended unless such amendment is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 6 Indemnification In accordance with the Georgia Nonprofit Corporation Code, and to the full extent allowed by Georgia law, the Association shall indemnify every person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such person is or was serving as a director or officer of the Association, against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the person is proper under the circumstances.

Section 7 Implied Rights The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate the right or privilege.

Section 8 Perpetuities If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

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

Section 10 Agreements Subject to the prior approval of Declarant (until the Declarant Control Period expires) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 11 Disclosures Each Owner and Occupant acknowledge the following:

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

(b) The views from an Owner's Lot may change over time due to, among other circumstances, additional development and the removal or addition of landscaping,

(c) Declarant makes no representations regarding the schools that currently or may in the future serve the Community,

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

(e) All Owners and Occupants acknowledge and understand that Declarant will be engaging in other construction activities related to the construction of the Community. Such construction activities may, from time to time, produce certain conditions in the Community, including, without limitation (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness, (ii) smoke, (iii) noxious, toxic, or corrosive fumes or gases, (iv) obnoxious odors, (v) dust, dirt or flying ash, (vi) unusual fire or explosion hazards, and/or (vii) temporary interruption of utilities and services, and/or (viii) other conditions that may threaten the security or safety of Persons in the Community. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions in the Community resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of the Declaration,

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

(g) No representations are made that the residences will be soundproof, free from vibrations or that sound and vibrations may not be transmitted from one residence to another or from the Common Property to

(h) Concrete surfaces are subject to cracking due to (A) water penetration, (B) expansion and contraction of the concrete with temperature changes, and (C) building settlement.

(i) A residence may trap humidity created by every day living (cooking, bathing, laundering etc.) As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Owners and Occupants, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold.

(j) Declarant reserves the right to change, in its sole discretion, the subdivision name and the street names and addresses in the subdivision including the street addresses.

(k) The EPA has indicated that a number of homes and residential buildings in the United States experience elevated levels of radon gas. Radon is a naturally occurring gas that is caused by radioactive decay of the element radium. Since radium is contained in the earth's crust and dissolves readily in water, radon can be found virtually everywhere and can enter the home or residential buildings through a variety of sources. Owners seeking information about radon can contact the EPA or a state environmental office. Declarant has no expertise in the measurement or reduction of radon in homes or residential buildings or regarding acceptable levels or possible health hazards associated with radon. Declarant makes no warranty or representation of any kind, express or implied, regarding the presence or absence of radon gas, or regarding the effectiveness of any architectural activities for reducing the presence of radon.

(l) Portions of the Community may not be landscaped and maybe allowed to return to their natural state.

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

(n) While the drainage system for surface water runoff on the Community will be constructed in accordance with applicable governmental standards, the Community may still be subject to erosion and/or flooding during unusually intense or prolonged periods of rain

(o) Light may emit from improvements on adjacent properties

(p) Ponding of water may occur on flat surfaces, including, but not limited to driveways and decks

(q) Only residences with four (4) stories shall contain fire sprinkler systems therein. No three (3) story residences shall contain such a fire sprinkler system

(r) Guest parking within the Community shall be limited to those certain parking spaces located on the Common Property and designated as guest parking

(s) Noises from passing aircraft and vehicular traffic on Briarcliff Road may be audible from Exclusive Common Property, Common Property, and from within the residences

(t) The Community is located in an urban environment. Sound and vibrations may be audible and felt from such things as sirens, whistles, horns, the playing of music, people speaking loudly, trash being picked up, deliveries being made, equipment being operated, HVAC equipment, dogs barking, construction activity, building and grounds maintenance being performed, automobiles, buses, trucks, ambulances, airplanes, trams and other generators of sound and vibrations typically found in an urban area. In addition to sound and vibration, there may be odors (from restaurants, food being prepared and dumpsters) and light (from signs, streetlights, other buildings, car headlights and other similar items) in urban areas and these things are part of the reality and vibrancy of urban living. While some steps have been taken to mitigate sound in the design of the building(s) the residences are not constructed to be totally soundproof or free from vibrations

Section 12 Captions The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer

Section 13 Gender and Grammar The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine

## ARTICLE XVII

### Declarant's Rights

Section 1 Transfer of Declarant's Rights Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or in the Bylaws, as applicable. Furthermore, no such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the public records of DeKalb County

Section 2 Construction and Sale Period Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation of the Association, use restrictions, rules and regulations, design guidelines, and any amendments thereto, so long as Declarant owns any property in the Community for development and/or sale, Declarant reserves an easement across all property in the Community for Declarant 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, convenient, or incidental to Declarant's development, construction, and sales activities related to property described on Exhibit "A" to this Declaration, including, but without limitation

(a) 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,

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

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

(d) the right to 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,

(e) the right to carry on sales and promotional activities in the Community,

(f) the right to erect and maintain signs, and

(g) the right to construct and operate business offices, construction trailers, model residences, and sales offices. Declarant may use residences, offices, or other buildings owned or leased by Declarant as model residences and sales offices.

Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without Declarant's express written consent until Declarant's rights hereunder have terminated as hereinabove provided.

**[THIS SPACE LEFT BLANK INTENTIONALLY.]**

**[SIGNATURES APPEAR ON NEXT PAGE.]**

IN WITNESS WHEREOF, the undersigned, being the duly appointed officers of Declarant herein, have executed this instrument and affixed the corporate seal this 10 day of January, 2008

**VISCAYA BRIARCLIFF, LLC,**  
a Georgia limited liability company

By Viscaya, LLC, a Georgia limited liability company, its manager

By [Signature] (SEAL)  
Name John Hogan  
Title Manager

Signed, sealed, and delivered  
this 10<sup>th</sup> day of January, 2008  
in the presence of

[Signature]  
WITNESS

[Signature]  
NOTARY PUBLIC

My Commission Expires 12/16/2011



**EXHIBIT "A"****Description of Property Submitted**

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND LYING IN LAND LOT 241 OF THE 15TH DISTRICT OF DEKALB COUNTY, GEORGIA AND BEING MORE FULLY SHOWN AND DESIGNATED ON THAT CERTAIN FINAL PLAT OF ZERO LOT LINE SUBDIVISION OF THE RESIDENCES OF LULLWATER PARK, BRIARCLIFF ROAD, ATLANTA, GA FOR VISCAYA DEVELOPMENT GROUP, PREPARED BY LOWE ENGINEERS DATED NOVEMBER 27, 2007, AS REVISED, HAVING THE FOLLOWING METES AND BOUNDS TO WIT:

COMMENCING AT THE INTERSECTION OF THE EASTERN RIGHT-OF-WAY OF BRIARCLIFF ROAD (60' R/W) AND THE NORTHERN RIGHT-OF-WAY OF PONCE DE LEON AVENUE (R/W VARIES), THE POINT-OF-COMMENCEMENT THENCE CONTINUING ALONG THE EASTERN RIGHT-OF-WAY OF BRIARCLIFF ROAD (60' R/W) A DISTANCE OF 1329.4' TO A 1/2" OPEN TOP FOUND (BENT), SAID POINT BEING THE POINT-OF-BEGINNING (P.O.B.)

THENCE FROM SAID POINT OF BEGINNING CONTINUING ALONG SAID RIGHT-OF-WAY OF BRIARCLIFF ROAD ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 2827.70', AN ARC LENGTH OF 198.80', BEARING NORTH 38 DEGREES 15 MINUTES 24 SECONDS EAST (N38°15'24"E) A DISTANCE OF 198.76' TO A #4 REBAR FOUND, THENCE CONTINUING NORTH 42 DEGREES 33 MINUTES 41 SECONDS EAST (N42°33'41"E) A DISTANCE OF 99.92' TO A #4 REBAR FOUND, THENCE CONTINUING NORTH 43 DEGREES 06 MINUTES 25 SECONDS EAST (N43°06'25"E) A DISTANCE OF 101.20' TO A 2" OPEN TOP FOUND; THENCE TURNING AND LEAVING SAID RIGHT-OF-WAY AND CONTINUING ALONG THE LINE OF N/F HIGHLAND HALL CONDOMINIUMS SOUTH 57 DEGREES 17 MINUTES 14 SECONDS EAST (S57°17'14"E) A DISTANCE OF 363.05' TO A POINT; THENCE TURNING AND CONTINUING SOUTH 36 DEGREES 20 MINUTES 37 SECONDS WEST (S36°20'37"W) A DISTANCE OF 199.45' TO A POINT, THENCE TURNING AND CONTINUING ALONG SAID LINE SOUTH 57 DEGREES 35 MINUTES 22 SECONDS EAST (S57°35'22"E) A DISTANCE OF 100.30' TO A POINT; THENCE TURNING AND CONTINUING SOUTH 37 DEGREES 24 MINUTES 59 SECONDS WEST (S37°24'59"W) A DISTANCE OF 100.12' TO POINT, THENCE TURNING AND CONTINUING NORTH 57 DEGREES 06 MINUTES 42 SECONDS WEST (N57°06'42"W) A DISTANCE OF 100.13' TO A POINT; THENCE TURNING AND CONTINUING SOUTH 36 DEGREES 08 MINUTES 00 SECONDS WEST (S36°08'00"W) A DISTANCE OF 101.32' TO A POINT; THENCE TURNING AND CONTINUING NORTH 56 DEGREES 48 MINUTES 03 SECONDS WEST (N56°48'03"W) A DISTANCE OF 390.89 FEET TO A POINT; THENCE ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 2827.70', AN ARC LENGTH OF 72.18', BEARING NORTH 36 DEGREES 58 MINUTES 26 SECONDS EAST (N36°58'26"E) A DISTANCE OF 72.18' TO THE POINT OF-BEGINNING (P.O.B.) SAID TRACT CONTAINS 3.71 ACRES (161,762 SQ. FT).



**EXHIBIT "B"**

**BYLAWS**

**OF**

**THE RESIDENCES AT LULLWATER PARK HOMEOWNERS ASSOCIATION, INC.**

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

**Attorneys**

**One Alliance Center, 4<sup>th</sup> Floor  
3500 Lenox Road  
Atlanta, Georgia 30326  
(404) 926-4500**

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***ALL RIGHTS RESERVED. THESE BYLAWS MAY BE USED ONLY IN CONNECTION WITH THE PROPERTY AT THE RESIDENCES AT LULLWATER PARK AND THE OPERATION OF THE RESIDENCES AT LULLWATER PARK HOMEOWNERS ASSOCIATION, INC.***

TABLE OF CONTENTS

	<u>Page</u>
I GENERAL	
1 Applicability	1
2 Name	1
3 Definitions	1
4 Membership	1
5 Entity Members	1
6 Voting	1
7 Majority	2
8 Purpose	2
9 Electronic Documents and Electronic Signatures	2
II MEETINGS OF MEMBERS	
1 Annual Meetings	3
2 Special Meetings	3
3 Notice of Meetings	3
4 Waiver of Notice	3
5 Quorum	3
6 Adjournment	3
7 Proxy	3
8 Action Taken Without a Meeting	4
9 Order of Business	4
III BOARD OF DIRECTORS	
A <u>Composition and Selection</u>	
1 Composition and Eligibility	4
2 Directors Appointed by Declarant	5
3 Number of Directors and Term of Office	5
4 Removal of Members of the Board of Directors	5
5 Vacancies	5
6 Compensation	5
7 Director Conflicts of Interest	6
8 Nomination	6
9 Elections	6
B <u>Meetings</u>	
1 Regular Meetings	6
2 Special Meetings	6
3 Waiver of Notice	6
4 Conduct of Meetings	6
5 Open Meetings	7
6 Action Without a Meeting	7

C Powers and Duties

1 Powers and Duties	7
2 Management Agent	8
3 Borrowing	8
4 Liability and Indemnification of Officers, Directors, and Committee Members	8

D Committees

1 New Construction Committee and Modifications Committee	9
2 Nominating Committee	9
3 Other Committees	9
4 Service on Committees	9

## IV OFFICERS

1 Designation	9
2 Election of Officers	9
3 Removal of Officers	9
4 Vacancies	9
5 President	9
6 Vice President	9
7 Secretary	10
8 Treasurer	10
9 Other Officers	10
10 Agreements, Contracts, Deeds, Leases, Etc	10

## V RULE MAKING AND ENFORCEMENT

1 Authority and Enforcement	10
2 Fining and Suspension Procedure	11
3 Additional Enforcement Rights	11

## VI MISCELLANEOUS

1 Notices	11
2 Severability	12
3 Captions	12
4 Gender and Grammar	12
5 Fiscal Year	12
6 Financial Review	12
7 Conflicts	13
8 Amendment	13
9 Books and Records	14

**BYLAWS**  
**OF**  
**THE RESIDENCES AT LULLWATER PARK HOMEOWNERS ASSOCIATION, INC.**

Article I  
General

Section 1 Applicability These Bylaws provide for the self-government of The Residences At Lullwater Park Homeowners Association, Inc. in accordance with the Articles of Incorporation filed with the Secretary of State and the Declaration of Covenants, Conditions, Restrictions and Easements for The Residences At Lullwater Park, recorded in the DeKalb County, Georgia land records ("Declaration")

Section 2 Name The name of the corporation is The Residences At Lullwater Park Homeowners Association, Inc ("Association")

Section 3 Definitions The terms used herein shall have their generally accepted meanings or such meanings as are specified in Article II of the Declaration

Section 4 Membership An Owner of a Lot shall automatically become a member of the Association upon taking title to the Lot and shall remain a member for the entire period of ownership. As may be more fully provided below, a spouse or a cohabitant of a member may exercise the powers and privileges of the member. If title to a Lot is held by more than one (1) Person, the membership shall be shared in the same proportion as the title, but there shall be only one (1) membership and one (1) vote per Lot. Membership does not include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. Membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of that Lot and may be transferred only in connection with the transfer of title.

Section 5 Entity Members In the event an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust, manager of a limited liability company or representative of such other legal entity shall be eligible to represent such entity or entities in the affairs of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity or entities which are the Owner, and termination of the person's relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving and such vacancy will be filled in accordance with these Bylaws.

Section 6 Voting Each Lot shall be entitled to one (1) equal vote, which vote may be cast by the Owner, the Owner's spouse, the cohabitant of the Owner, or by a lawful proxy as provided below. When more than one (1) Person owns a Lot, the vote for such Lot shall be exercised as they determine between or among them, but in no event shall more than one (1) vote be cast with respect to any Lot. If only one (1) co-owner attempts to cast the vote for a Lot, it shall be conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such Lot. In the event of disagreement between or among co-owners and an attempt by two (2) or more of them to cast such vote or votes, such Persons shall not be recognized and such vote or votes shall not be counted. No Owner shall be eligible to vote, either in

person or by proxy, if that Owner is shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association or if the Owner has had its voting rights suspended for the infraction of any provision of the Declaration, these Bylaws, or any rule of the Association. If the voting rights of an Owner have been suspended, that Owner shall not be counted as an eligible vote for any purpose, including without limitation, establishing a Majority or a quorum.

Section 7 Majority As used in these Bylaws, the term "Majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total number of eligible votes, Owners, or other group, respectively. Unless otherwise specifically stated, the words "Majority vote" mean more than fifty percent (50%) of those voting in person or by proxy. Except as otherwise specifically provided in the Declaration or these Bylaws, all decisions shall be by Majority vote.

Section 8 Purpose The Association shall have the responsibility of administering the Community, establishing the means and methods of collecting the contributions to the Common Expenses, arranging for the management of the Community and performing all of the other acts that may be required to be performed by the Association pursuant to the Georgia Nonprofit Corporation Code and the Declaration. Except as to those matters which the Declaration or the Georgia Nonprofit Corporation Code specifically require to be performed by the vote of the Association membership, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

Section 9 Electronic Documents and Electronic Signatures

(a) Electronic Documents Whenever these Bylaws require that a document, record or instrument be "written" or "in writing," the requirement is deemed satisfied by an Electronic Document. Records, documents and instruments shall not be denied effect or validity solely on the grounds that they are electronic.

(b) Electronic Signatures Whenever these Bylaws require a signature, an Electronic Signature satisfies that requirement only if (i) the signature is easily recognizable as a Secure Electronic Signature which is capable of verification, under the sole control of the signatory, and attached to the electronic document in such a way that the document cannot be modified without invalidating the signature, or (ii) the Board reasonably believes that the signatory affixed the signature with the intent to sign the Electronic Document, and that the Electronic Document has not been modified since the signature was affixed.

(c) Verification and Liability for Falsification The Board may require reasonable verification of any Electronic Signature, Electronic Document, record or instrument. Pending verification, the Board may refuse to accept any electronic signature, Electronic Document, record or instrument that, in the Board's sole discretion, is not clearly authentic. Neither the Board nor the Association shall be liable to any member or any other Person for accepting or acting in reliance upon an Electronic Signature or Electronic Document which the Board reasonably believes to be authentic. Any member or Person who negligently, recklessly or intentionally submits any falsified Electronic Document or unauthorized Electronic Signature shall fully indemnify the Association for actual damages, reasonable attorneys' fees and expenses incurred as a result of such acts.

Article II  
Meetings of Members

Section 1 Annual Meetings The regular annual meeting of the members shall be held during the first quarter of each year with the date, hour, and place to be set by the Board of Directors. No annual meeting of the Association shall be set on a legal holiday.

Section 2 Special Meetings Special meetings of the members may be called for any purpose at any time by the President or Secretary, by request of any two (2) members of the Board of Directors, or upon written petition of Owners holding at least twenty-five percent (25%) of the Total Association Vote. Any such written petition by the members must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition setting the date, time and location of the meeting (which is not required to be the date, time or location requested in any petition submitted to the Association), and the Secretary shall send notice of the meeting in accordance with these Bylaws. Any special meeting called pursuant to written petition shall be set within thirty (30) days of the date of the petition.

Section 3 Notice of Meetings It shall be the duty of the Secretary to mail or deliver to each Owner of Lots of record or to the Lots a notice of each annual or special meeting of the Association at least twenty-one (21) days prior to each annual meeting and at least ten (10) days prior to each special meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it is to be held. The notice of an annual meeting shall state the time and place of the meeting. If any Owner wishes notice to be given at an address other than his or her Lot, the Owner shall have designated by notice in writing to the Secretary such other address. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered proper service of notice.

Section 4 Waiver of Notice Waiver of notice of meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any meeting of the Owners, either before, at, or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of notice of the time, date, and place thereof unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

Section 5 Quorum Except as may be provided elsewhere, the presence of Owners, in person or by proxy, entitled to cast one-third (1/3) of the Total Association Vote shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. Owners whose voting rights have been suspended pursuant to the Declaration or these Bylaws shall not be counted as eligible votes toward the quorum requirement.

Section 6 Adjournment Any meeting of the Owners may be adjourned from time to time for periods not exceeding ten (10) days by vote of the Owners holding the Majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business that could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.

Section 7 Proxy Any member entitled to vote may do so by written proxy duly executed by the member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed.

dared and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery, U.S. mail or facsimile transmission to any Board member or the property manager. Proxies may be revoked only by written notice delivered to the Secretary, except that (a) the presence in person by the giver of a proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting, and (b) a later dated proxy shall automatically be deemed to invalidate any previously given proxy. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

Section 8 Action Taken Without a Meeting In the Board's discretion, any action that may be taken by the Association members at any annual, regular, or special meeting may be taken without a meeting if the Board delivers a written consent form or written ballot to every member entitled to vote on the matter.

(a) Ballot A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the 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.

All solicitations for votes by written ballot shall (i) indicate the number of responses needed to meet the quorum requirements, (ii) state the percentage of approvals necessary to approve each matter other than election of directors, and (iii) specify the time by which a ballot must be received by the Board in order to be counted. A written ballot may not be revoked. The Association shall maintain such ballots in its file for at least three (3) years.

(b) Written Consent Approval by written consent shall be valid only when the number of written consents setting forth the actions taken is received and equals or exceeds the requisite Majority of the voting power required to pass such action at a meeting held on the date that the last consent is executed and such action is consented to by the Declarant, if required. Executed written consents shall be included in the minutes or filed with the Association's records. If an action of the Members is approved by written consent hereunder, the Board shall issue written notice of such approval to all members who did not sign written consents. Membership approval shall be effective ten (10) days after written notice is issued, provided, however, if the consent is to an amendment to the Declaration or Bylaws which must be recorded, the effective date shall be no earlier than the date of recording of such amendment.

Section 9 Order of Business At all meetings of the Association, Roberts Rules of Order (latest edition) shall govern when not in conflict with the Declaration, these Bylaws or the Articles of Incorporation, unless the Owners present at a particular meeting vote to suspend Robert's Rules at that meeting.

### Article III Board of Directors

#### A Composition and Selection

Section 1 Composition and Eligibility The affairs of the Association shall be governed by a Board of Directors. Except for directors appointed by the Declarant hereunder, the directors shall be Owners or spouses or cohabitants of such Owners, provided, however, no Owner and his or her spouse or cohabitant may serve on the Board at the same time, and no co-owners may serve on the Board at the same

time Except for directors appointed by the Declarant, all directors must reside in the Community No persons shall be eligible to be elected to or continue to serve on the Board of Directors if they are shown on the books and records of the Association to be more than sixty (60) days delinquent in the payment of any assessment or charge by the Association Except for directors appointed by the Declarant, directors shall not be eligible to serve more than three (3) consecutive two (2) year terms without first resigning from the Board for a time period which shall be the lesser of (a) one (1) year, or (b) the period of time from the end of one (1) annual meeting of the Association to the beginning of the next annual meeting of the Association

Section 2 Directors Appointed by the Declarant Notwithstanding anything to the contrary herein, Declarant shall have exclusive authority to appoint and remove directors and officers until the earlier of (a) seven (7) years after the recording of the Declaration, (b) unless Declarant at that time has an unexpired option to add Additional Property, the date as of which one hundred percent (100%) of the Lots shall have been conveyed to Persons who have not purchased such Lots for the purpose of construction of a residence and resale of such Lot and residence, however, notwithstanding the foregoing, Declarant shall have the option at its sole and absolute discretion to relinquish such authority to appoint and remove directors on the date as of which eighty percent (80%) of the Lots shall have been conveyed to such aforesaid Persons, or (c) the surrender in writing by Declarant of the authority to appoint and remove officers and directors of the Association

Section 3 Number of Directors and Term of Office During the Declarant Control Period, the Board shall consist of one (1) directors Not later than thirty (30) days after termination of the Declarant Control Period, the Association shall call a meeting to be held at which Owners shall elect three (3) directors If such meeting is not the annual meeting, the directors elected shall serve until the next annual meeting At the first annual meeting after Declarant has surrendered control of the Association, three (3) directors shall be elected The two (2) directors receiving the highest number of votes shall be elected for terms of two (2) years each and the remaining one (1) director shall be elected for a term of one (1) year At each annual meeting thereafter, a successor shall be elected to serve for a term of two (2) years The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association

Section 4 Removal of Members of the Board of Directors At any annual or special meeting of the Association duly called, any one or more Board members, except for directors appointed by Declarant hereunder may be removed with or without cause by a Majority of the members of the Association entitled to elect said director and a successor may then and there be elected to fill the vacancy thus created Further, any director who is more than sixty (60) days past due in the payment of any assessment or charge shall be automatically removed from the Board of Directors, even if the director subsequently pays the amount owed, and the vacancy shall be filled as provided in Section 5 below Any director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings may be removed by the vote of a Majority of the other directors Any director whose removal has been proposed shall be given at least ten (10) days notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting

Section 5 Vacancies Vacancies in the Board caused by any reason except the removal of a director by vote of the membership or by Declarant, shall be filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors The successor so selected shall hold office for the remainder of the term of the director being replaced Notwithstanding anything to the contrary herein, any director who is an officer, director or other designated agent of an entity member and whose position becomes vacant for any reason, may be replaced by the entity who is the Owner unless there has been a transfer of ownership of the Lot, in which case, the vacancy shall be filled by the remaining directors, even if less than a quorum at any meeting of the directors



Section 6 Compensation Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a Majority vote of the members. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors.

Section 7 Director Conflicts of Interest Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided that the director's interest is disclosed to the Board and the contract is approved by a Majority of the directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall not count for purposes of establishing a quorum of the Board. The interested director shall be entitled to be present at any meeting at which the proposed contract is discussed but shall not be entitled to discuss the proposed contract during the discussion. Notwithstanding anything herein, the directors, during the period of Declarant control, shall be authorized on behalf of the Association to enter into contracts with the Declarant and its affiliates as set forth in the Declaration.

Section 8 Nomination Nomination for election to the Board shall be made from the floor at the meeting. The Board also may appoint a nominating committee to make nominations prior to the meeting.

Section 9 Elections All members of the Association eligible to vote shall be entitled to cast their entire vote for each directorship to be filled. There shall be no cumulative voting. The directorships for which elections are held shall be filled by that number of candidates receiving the most votes. Voting for election of Board members shall be by written ballot (unless dispensed by unanimous consent at such meeting at which such voting is conducted).

## B Meetings

Section 1 Regular Meetings Regular meetings of the Board may be held at such time and place as shall be determined from time to time by the Board. The newly elected Board shall meet within ten (10) days after each annual meeting of the membership.

Section 2 Special Meetings Special meetings of the Board may be called by the President on two (2) days notice to each director given by regular first class or electronic mail, in person, by telephone, or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board shall be called by the President, Vice President, Secretary, or Treasurer in like manner and on like notice on the written request of at least two (2) directors.

Section 3 Waiver of Notice Any director may, at any time, in writing, waive notice of any meeting of the Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall also constitute a waiver of notice by him or her of the time and place of such meeting. If all directors are present at any Board meeting, no notice shall be required and any business may be transacted at such meeting.

Section 4 Conduct of Meetings The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. A Majority of directors shall constitute a quorum for the transaction of business. One (1) or more directors who participate

in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other

Section 5 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. Notwithstanding the above, 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.

Section 6 Action Without a Meeting Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if a Majority of the directors consent to such action in writing sent via hand delivery, regular first class or electronic mail or facsimile. Such consents must describe the action taken and be signed by no fewer than a Majority of the directors and such consents shall be filed with the minutes of the Board of Directors.

### C Powers and Duties

Section 1 Powers and Duties The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Community and may do all such acts and things as are not by the Declaration, the Articles of Incorporation or these Bylaws directed to be done and exercised exclusively 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 shall be responsible for the following, in the way of explanation, but not limitation:

(a) preparation and adoption of an annual budget, in which there shall be established the contribution of each Owner to the Common Expenses,

(b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of payments of the annual assessment,

(c) providing for the operation, care, upkeep, and maintenance of all of the Area of Common Responsibility as defined in the Declaration,

(d) designating, hiring, and dismissing the personnel necessary for the operation of the association and the maintenance, repair, and replacement of the area of common responsibility 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 financial depository or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in O C G A § 14-3-302, and using the proceeds to administer the Association,

(f) making and amending rules and regulations and imposing sanctions for violation thereof, including, without limitation, monetary fines,

(g) opening of bank or other financial accounts on behalf of the Association and designating the signatories required,

(h) making or contracting for the making of repairs, additions, and improvements to, or alterations of the Area of Common Responsibility in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty.

(i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings that may be instituted on behalf of or against the Owners concerning the Association.

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

(k) paying the costs of all services rendered to the Association or its members and not directly chargeable to specific Owners,

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred, and

(m) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominium associations, or other associations or corporations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 2 Management Agent The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board, to perform such duties and services as the Board of Directors shall authorize. The Board shall use reasonable efforts in any management contract to provide for termination of such contract by the Association with or without cause and without penalty, upon no more than thirty (30) days written notice. No management contract shall have a term in excess of one (1) year.

Section 3 Borrowing Except as may be set forth in the Declaration, the Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration, or improvement of the Area of Common Responsibility, and for other purposes, with the approval of a Majority of the members of the Association.

Section 4 Liability and Indemnification of Officers, Directors and Committee Members The Association shall indemnify every officer, director, and committee member (including directors, officers, and committee members appointed by Declarant during the period of Declarant control) against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person is an officer, director or committee member at the time such expenses are incurred, subject to the limitations below. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer, director or committee member in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The Association, in determining whether or not to indemnify a director, officer or committee member, shall not impute knowledge to said director, officer or committee member from any source whatsoever, rather, any such determination shall be based on the actual knowledge of the director, officer or committee member. 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 (except to the extent that such officers, directors and committee members may also be members of the Association), and the Association shall indemnify and forever hold each such officer, director or 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 or director may be entitled. The Association shall maintain, as a Common Expense, adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

#### D Committees

Section 1 New Construction Committee and Modifications Committee The Board shall establish a New Construction Committee and Modifications Committee for the purpose of establishing and maintaining appearance standards in the Community as provided in the Declaration.

Section 2 Nominating Committee The Board shall establish a Nominating Committee for the purpose of nominating candidates for election to the Board of Directors as provided in Article III, Part A Section 8 of these Bylaws.

Section 3 Other Committees There shall be such other committees as the Board shall determine with the powers and duties that the Board shall authorize.

Section 4 Service on Committees Unless otherwise provided in these Bylaws, the Declaration, or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed with or without cause at any time and with or without a successor being named.

#### Article IV Officers

Section 1 Designation The principal officers of the Association shall be the President, the Secretary and the Treasurer, all or any of which may be the same person. A Vice President may be elected at the discretion of the Board.

Section 2 Election of Officers The Association officers shall be elected annually by the Board at the first Board meeting following each annual meeting of the members and shall hold office at the pleasure of the Board and until a successor is elected.

Section 3 Removal of Officers Upon the affirmative vote of a Majority of the members of the Board, any officer may be removed, either with or without cause, and a successor may be elected.

Section 4 Vacancies A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

Section 5 President The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and of the Board. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the power to appoint committees from

among the members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association

Section 6 Vice President The Vice President, if any, shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting

Section 7 Secretary The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under Georgia law

Section 8 Treasurer The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent

Section 9 Other Officers Other offices may be created by the Board, and the Board members that hold such offices shall have such titles and duties as are defined by the Board

Section 10 Agreements, Contracts, Deeds, Leases, Etc All agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors

#### Article V

##### Rule Making and Enforcement

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

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

and the fine shall be an assessment and a lien against the Lot until paid. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

**Section 2** Fining and Suspension Procedure The Board shall not impose a fine, suspend the right to vote or suspend the right to use the Common Property (provided, however, if an Owner is shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association, suspension of the right to vote and the right to use the Common Property shall be automatic), unless and until the Association has sent or delivered written notice to the violator as provided in subsection (a) below. Any such fine or fines may be effective or commence upon the sending of such notice or such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge such fine under subsection (b) below.

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

(b) Hearing If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time.

**Section 3** Additional Enforcement Rights Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, towing of vehicles that are in violation of the parking rules and regulations or performing maintenance on any Lot upon a failure by the Lot Owner to so do) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section 2 of this Article. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

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

Article VI  
Miscellaneous

Section 1 Notices

(a) Method of Giving Notice Unless otherwise prohibited in these Bylaws, all notices, demands, bills, statements, or other communications shall be in writing and shall be given

- (i) Personal delivery to the addressee, or
- (ii) Personal delivery to the addressee, or
- (iii) Via United States mail, first class, postage prepaid, or
- (iv) Via electronic mail, or
- (v) Via facsimile, or

(vi) Via a secure web site, provided that notice shall be deemed given via web site only upon proof that the addressee has retrieved the message

(b) Addressee Notice sent by one of the methods described in Section 1. subparagraph (a) shall be deemed to have been duly given

(i) If to an Owner, at the address, electronic mail address or facsimile number which the Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Lot of such Owner,

(ii) If to an Occupant, to the electronic mail address or facsimile number which the Occupant has designated in writing, or if no such address has been designated, at the address of the residence located on a Lot, or

(iii) If to the Association, the Board or the managing agent, at the postal address, facsimile or electronic mail address of the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary

Section 2 Severability The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws or the Declaration

Section 3 Captions The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof

Section 4 Gender and Grammar The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires

Section 5 Fiscal Year The fiscal year of the Association may be set by Board resolution, and, in the absence thereof, shall be the calendar year

Section 6 Financial Review A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board and a financial statement prepared. However, after having received the Board's financial statement review at the annual meeting, the Owners may, by a Majority of the Association vote, require that the accounts of the Association be audited as a Common Expense by an independent accountant. Such statement shall be made available to the holder, insurer, or guarantor of any first mortgage on a Lot upon submission of a written request and must be available within one hundred twenty (120) days of the Association's fiscal year end. If an audited financial statement by an independent accountant is not required, a mortgage holder may have an audited statement prepared at its own expense.

Section 7 Conflicts The duties and powers of the Association shall be those set forth in the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association, provided, however, that if there are conflicts or inconsistencies between the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, or the Articles of Incorporation, then the provisions of the Georgia Nonprofit Corporation Code, as may be applicable, the Declaration, the Articles of Incorporation and these Bylaws, in that order, shall prevail and each Owner of a Lot by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

Section 8 Amendment Except where a higher vote is required for action under a particular provision of the Declaration or Bylaws, in which case such higher vote shall be necessary to amend, these Bylaws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members holding a Majority of the total eligible vote of the Association or two-thirds (2/3) of the votes actually cast, whichever is less. As long as Declarant has the right to appoint the directors and officers of the Association as provided in Article III, Part A, Section 2 of these Bylaws, any amendment to the Bylaws shall require the written consent of Declarant. No amendment shall become effective until it is certified by the President and Secretary of the Association and recorded in the DeKalb County Georgia land records. Any amendment duly certified and recorded shall be conclusively presumed to have been duly adopted in accordance with the Declaration and Bylaws. Owners whose voting rights have been suspended pursuant to the Declaration or these Bylaws shall not be counted as eligible votes toward the amendment requirement.

Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

Section 9 Books and Records

(a) All members of the Association and any holder of a first Mortgage shall be entitled to inspect the following records at a reasonable time and location specified by the Association, upon written request at least five (5) days before the date on which the member or mortgagee wishes to inspect and copy:

(i) its Articles or restated Articles of Incorporation and all amendments to them currently in effect,

(ii) its Bylaws or restated Bylaws and all amendments to them currently in effect,



(iii) resolutions adopted by either its members or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members.

(iv) resolutions adopted by either its members or Board of Directors relating to the characteristics, qualification, rights, limitations, and obligations of members or any class or category of members.

(v) the minutes of all meetings of members and records of all actions approved by the members for the past three (3) years,

(vi) all written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years,

(vii) a list of the names and business or home addresses of its current directors and officers, and

(viii) its most recent annual report delivered to the Secretary of State

(b) A member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the member wishes to inspect and copy only if the member's demand is made in good faith and for a proper purpose that is reasonably relevant to the member's legitimate interest as a member, the member describes with reasonable particularity the purpose and the records the member desires to inspect, the records are directly connected with this purpose, and the records are to be used only for the stated purpose

(i) excerpts from minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the members, and records of action taken by the members or the Board without a meeting, to the extent not subject to inspection under subsection 9(a),

(ii) accounting records of the Association, and

(iii) the membership list only if for a purpose related to the member's interest as a member. Without the consent of the Board, a membership list or any part thereof may not be used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the Association, used for any commercial purpose, or sold to or purchased by any person

The Association may impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided to the Member

Notwithstanding anything to the contrary, the Board may limit or preclude member inspection of confidential or privileged documents, including attorney/client privileged communications, executive session meeting minutes, and financial records or accounts of other members. Minutes for any Board or Association meetings do not become effective and an official association record until approved by the Board or Association membership, as applicable, at a subsequent meeting

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Filed and Recorded  
1/17/2008 2 16 30 PM

**Linda Carter**  
Clerk of Superior Court  
DeKalb County, Georgia

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

Cross-reference to Deed to Secure Debt in Deed Book 18519,  
Page 189, DeKalb County, Georgia Records

**MORTGAGEE CONSENT, APPROVAL AND SUBORDINATION**

BRIARCLIFF MEZZANINE, LLC, a Georgia limited liability company (Mortgagee"), being the owner and holder of a Deed to Secure Debt and Security Agreement recorded in Deed Book 18519, Page 189, DeKalb County, Georgia records (the "Security Instrument") hereby approves that certain Declaration of Covenants, Conditions, Restrictions and Easements for The Residences At Lullwater Park (the "Declaration") which is to be recorded with this Mortgagee Consent

FURTHERMORE, Mortgagee does hereby expressly subordinate to the Declaration all right, title, interest and lien of the undersigned created under and by virtue of the Security Instrument with respect to the property described in and subject to the Declaration or hereafter made subject to the Declaration in accordance with the terms thereof. Except as set forth herein, the Security Instrument shall otherwise remain in full force and effect and shall not be subordinated to any other lien or encumbrance

IN WITNESS WHEREOF, the undersigned has executed this Mortgagee Consent, Approval and Subordination this 15 day of January, 2008

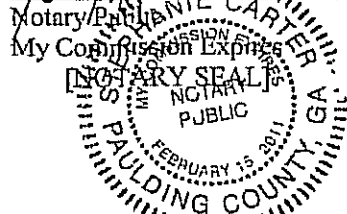
**MORTGAGEE:** BRIARCLIFF MEZZANINE, LLC

By Neil Lucreti [SEAL]  
Title MANAGER

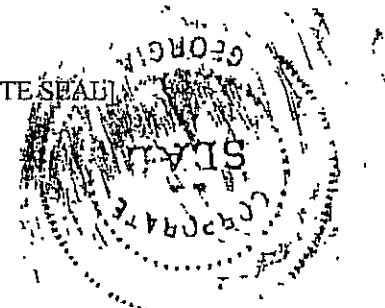
Signed, sealed, and delivered  
this 15 day of January, 2008

Rudye Adkisson  
Witness

Linda Carter



[CORPORATE SEAL]



2008008943

DEED BOOK 20572 Pg 693



Filed and Recorded  
1/17/2008 2 16 30 PM

Linda Carter  
Clerk of Superior Court  
DeKalb County, Georgia

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

Cross-reference to Deed Book 18519  
Deed to Secure Debt Page 166

**MORTGAGEE CONSENT, APPROVAL AND SUBORDINATION**

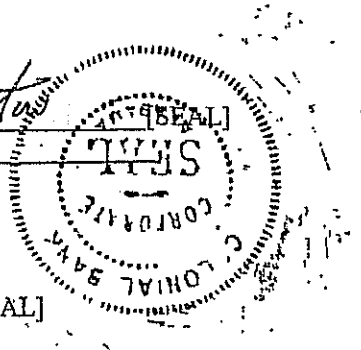
Colonial Bank, N.A. ("Mortgagee"), being the owner and holder of a Deed to Secure Debt and Security Agreement recorded in Deed Book 18519, Page 166, DeKalb County, Georgia records (the "Security Instrument") hereby approves that certain Declaration of Covenants, Conditions, Restrictions and Easements for The Residences At Lullwater Park (the "Declaration") which is to be recorded with this Mortgagee Consent

FURTHERMORE, Mortgagee does hereby expressly subordinate to the Declaration all right, title, interest and lien of the undersigned created under and by virtue of the Security Instrument with respect to the property described in and subject to the Declaration or hereafter made subject to the Declaration in accordance with the terms thereof. Except as set forth herein, the Security Instrument shall otherwise remain in full force and effect and shall not be subordinated to any other lien or encumbrance

IN WITNESS WHEREOF, the undersigned has executed this Mortgagee Consent, Approval and Subordination this 15 day of JAN., 2008

MORTGAGEE: COLONIAL BANK, N.A.

By Rudy A. Brister  
Title SVP



[CORPORATE SEAL]

Signed, sealed, and delivered  
this 15 day of January, 2008

Thomas J. Fuddled  
Witness

Karen P. Evans  
Notary Public

My Commission Expires  
[NOTARY SEAL]

Notary Public, Henry County, Georgia  
My Commission Expires Feb 22, 2008