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Weissman PC  
One Alliance Center, 4th Floor  
3500 Lenox Road  
Atlanta, Georgia 30326  
Attention: Seth G. Weissman, Esq.

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Deed Book 56129, Page 1  
Deed Book 56349, Page 89

**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**  
**FOR**  
**THE KELLY AT NORCROSS**



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

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STATE OF GEORGIA  
COUNTY OF FULTON

**AMENDED AND RESTATED**

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

**FOR**

**THE KELLY AT NORCROSS**

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE KELLY AT NORCROSS** ("Declaration," as further defined in Section 1.19 of this Declaration) is made on the date set forth below by Stanley Martin Companies, LLC, a Maryland limited liability company ("Stanley Martin").

**WITNESSETH:**

WHEREAS, the Declaration of Covenants, Conditions, Restrictions and Easements for The Kelly at Historic Norcross was recorded on September 12, 2018 in Deed Book 56129, Page 1, et seq., Gwinnett County, Georgia records (hereinafter referred to as the "Original Declaration");

WHEREAS, 125 Kelly Street Properties, LLC, a Georgia limited liability company ("Original Declarant") was the "declarant" under the Original Declaration as defined therein;

WHEREAS, the Plat of The Kelly in Historic Norcross was recorded on December 21, 2018 in Plat Book 143, Page 282, et seq., aforesaid records ("Plat");

WHEREAS, the Original Declarant conveyed the property described on the Plat to SM Atlanta by, through and under that certain Limited Warranty Deed recorded on January 24, 2019 in Deed Book 56349, Page 79, et seq., aforesaid records;

WHEREAS, Section 16.1 of the Original Declaration provides that Declarant may unilaterally amend the Original Declaration as long as Declarant owns any property for development and/or sale in the Community, and as long as any such amendment does not materially adversely affect the substantive rights of any Owner;

WHEREAS, Original Declarant assigned all of its rights as "declarant" under the Original Declaration to SM Atlanta by virtue of that certain Assignment of Declarant Status Under the Declaration of Covenants, Conditions, Restrictions and Easements for The Kelly in Historic Norcross Subdivision recorded on January 4, 2019 in Deed Book 56349, Page 89, et seq., aforesaid records;

WHEREAS, effective September 17, 2019, SM Atlanta was merged into Stanley Martin as reflected in that certain Certificate of Merger recorded on September 26, 2019 in Deed Book 56908, Page 675, et seq., aforesaid records;

WHEREAS, Stanley Martin is the current "Declarant" under the Declaration;

WHEREAS, Stanley Martin owns at least seventy-five percent of the Lots in the Community;

WHEREAS, through inadvertence or oversight, the Bylaws were omitted from Exhibit "B" of the Original Declaration and Declarant desires to correct such error;



WHEREAS, Stanley Martin desires to replace the Original Declaration in its entirety with this Declaration;

WHEREAS, Stanley Martin has approved this Declaration;

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereto to the provisions of this Declaration and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, the Original Declaration and all exhibits thereto are hereby stricken in their entirety and this Declaration is simultaneously substituted therefore. Declarant declares that the real property described in Exhibit "A" to 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 SUBMIT THE COMMUNITY TO THE TERMS OF THE GEORGIA PROPERTY OWNERS ASSOCIATION ACT, O.C.G.A. §44-3-220, ET SEQ.**

**THIS DECLARATION DOES NOT AND IS NOT INTENDED TO SUBMIT THE COMMUNITY TO THE TERMS OF THE GEORGIA CONDOMINIUM ACT, O.C.G.A. § 44-3-70, ET SEQ.**



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## ARTICLE 1. DEFINITIONS

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

**Section 1.1. Adjacent Properties** shall have the meaning set forth in Section 16.21(b) of this Declaration.

**Section 1.2. Annual Assessment** shall have the meaning specified in Section 5.2 of this Declaration and shall constitute the assessments which, pursuant to the provisions of Article 5 of this Declaration, shall be levied by the Association against the Lots each year for the purpose of raising the funds necessary to pay the Common Expenses.

**Section 1.3. Architectural Review Committee or ARC** shall mean the committee established to exercise the architectural review powers set forth in Article 6 of this Declaration, which shall be the Board of Directors unless by resolution the Board appoints a separate Architectural Review Committee. Notwithstanding the foregoing, during the Development Period, Declarant shall have the right to appoint all members of the Architectural Review Committee.

**Section 1.4. Area of Common Responsibility** shall mean and refer to the Common Area, together with other areas, if any, and the improvements located thereon, which by the terms of this Declaration or by contract or agreement with any other Person become the responsibility of the Association.

**Section 1.5. Articles or Articles of Incorporation** shall mean the Articles of Incorporation of The Kelly at Norcross Neighborhood Association, Inc., which have been filed with the Secretary of State of Georgia, as amended.

**Section 1.6. Association** shall mean The Kelly at Norcross Neighborhood Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

**Section 1.7. Association Maintenance** shall have the meaning set forth in Section 9.1 of this Declaration.

**Section 1.8. Board of Directors or Board** shall mean the appointed or elected body of the Association, as applicable, having its normal meaning under Georgia corporate law.

**Section 1.9. Bylaws** shall refer to the Bylaws of The Kelly at Norcross Neighborhood Association, Inc., attached to this Declaration as Exhibit "B" and made a part of this Declaration, as amended.

**Section 1.10. Claim** shall mean and refer to (i) any claim, grievance, or dispute, demand for arbitration or any claim in a court of competent jurisdiction arising out of or relating to the interpretation, application, or enforcement of the Governing Instruments or the rights, obligations, and duties of any Bound Party under this Declaration, (ii) any demand for arbitration or any claim in a court of competent jurisdiction, or (iii) any other claim asserted under the Right to Repair Act.

**Section 1.11. Claimant** shall have the same meaning as set forth in the Right to Repair Act.

**Section 1.12. Common Expenses** shall mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Area and otherwise for the benefit of all Lots.



**Section 1.13. Common Area** shall mean any and all real and personal property and easements and other interests, together with the facilities and improvements located in the Community, now or in the future owned by the Association.

**Section 1.14. Community** shall mean and refer to that certain real property and any easements, conditions and other real property interests therein described in Exhibit "A" attached hereto and incorporated herein by this reference.

**Section 1.15. Community Instruments** shall mean this Declaration and all exhibits hereto (including the Bylaws), the Articles of Incorporation, the Rules and Regulations, and the Design Guidelines, all as may be supplemented or amended from time to time.

**Section 1.16. Community-Wide Standard** shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. This determination, however, must be consistent with the Community-Wide Standard originally established by Declarant.

**Section 1.17. Contractor** shall have the same meaning as set forth in the Right to Repair Act.

**Section 1.18. Declarant** shall mean and refer to Stanley Martin Companies, LLC, a Maryland limited liability company, and such of its successors-in-title who shall: (i) acquire from a predecessor "Declarant" all or any portion of the Community for the purpose of development or sale; and (ii) be designated as 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 Official Records. In all events, there shall be only one "Declarant" at any one time, and in no event shall more than one (1) Person have the right to exercise the power and authority of "Declarant" at any one time.

**Section 1.19. Declaration** shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for The Kelly at Norcross, including the exhibits attached to this Declaration, as amended and in effect from time to time.

**Section 1.20. Design Guidelines** shall mean the architectural guidelines and application and review procedures for the Community that are adopted by the Architectural Review Committee, as may be amended from time to time, as more particularly described in Section 6.3 herein.

**Section 1.21. Development Period** shall mean the period commencing on the Effective Date and terminating on the date on which Declarant no longer owns a Lot in the Community. Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Official Records.

**Section 1.22. Domestic Partner** shall mean any adult who cohabitates with an Owner and who has been designated as the Owner's Domestic Partner in a written statement, signed by the Owner and filed with the Association's secretary. A person shall no longer be a Domestic Partner upon receipt by the Association's secretary of a written termination notice, signed by either the Owner or the Domestic Partner.

**Section 1.23. Effective Date** shall mean the date of recording in the Official Records.

**Section 1.24. Electronic Document** shall mean information created, transmitted, received or stored by electronic means and retrievable in humanly perceivable form including, without limitation, e-mail, web pages, electronic documents, and facsimile transmissions.

**Section 1.25. Electronic Signature** shall mean a signature created, transmitted, received or stored by electronic means and includes, but is not limited to, a Secure Electronic Signature.



**Section 1.26. Eligible Mortgage Holder** shall mean those holders of first Mortgages secured by Lots in the Community who have requested notice of certain items as set forth in this Declaration.

**Section 1.27. Exempt Owners** shall have the meaning set forth in Section 7.4(h).

**Section 1.28. Exterior Structure or Improvement** shall mean and collectively refer to any exterior construction, alteration, addition or change of any nature whatsoever on a Lot, including, but not limited to, the following: (i) a building, fence, wall, playhouse, playground equipment, swimming pool, spa, Jacuzzi, or other structure; (ii) staking, clearing, excavation, grading, or filling of land; (iii) change in color, type or material of any existing improvement; (iv) planting or removal of landscaping materials; (v) placement or installation of exterior lighting, statuary, flags (subject to Section 7.17 below), fountains and similar items; (vi) modification of the interior of a balcony, deck and/or porch or similar portion of a structure which is visible from outside the Lot; or (vii) the addition of storm or screen doors or windows.

**Section 1.29. Georgia Non-profit Corporation Code** shall mean the Georgia Nonprofit Corporation Code, O.C.G.A. § 14-3-101 et seq., as amended.

**Section 1.30. Governing Instruments** shall mean and refer to this Declaration (and all exhibits to this Declaration, including the Bylaws), the Articles of Incorporation, the Survey, the Rules and Regulations, and the Design Guidelines, all as may be supplemented or amended from time to time.

**Section 1.31. Leasing Permit** shall have the meaning set forth in Section 7.4(b) of this Declaration.

**Section 1.32. Lot** shall mean any plot of land in the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family residence site as shown on the Survey.

**Section 1.33. Majority** shall mean those eligible votes by Owners, or other group as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

**Section 1.34. 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.

**Section 1.35. Mortgagee** shall mean the holder of a Mortgage.

**Section 1.36. Occupant** shall mean any natural person (be it an Owner or a tenant or tenant of an Owner) who occupies a Residence for any period of time. Where the context dictates, the term "Occupant" shall also be deemed to include the family members, occasional social guests, tenants, licensees and invitees of the Occupant.

**Section 1.37. Official Records** shall mean the official land records of the Clerk of the Superior Court of Gwinnett County, Georgia.

**Section 1.38. Owner** shall mean and refer to the record owner, whether one (1) or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

**Section 1.39. Permittee** shall mean any Occupant and any officer, agent, employee, licensee, customer, vendor, supplier, guest, invitee or contractor of an Owner, Occupant or Declarant.



**Section 1.40. Person** shall mean any natural person, as well as a corporation, joint venture, partnership (general or limited), limited liability company, association, trust, or other legal entity.

**Section 1.41. Residence** shall mean an improvement situated upon a Lot intended for independent use and occupancy as a residential dwelling for a single family. A Lot and the improvements located thereon shall not become a "Residence" until the following requirements have been met: (i) a certificate of occupancy has been issued by the appropriate governmental authorities as a prerequisite to the occupancy of such Residence; and (ii) the Lot and the Residence located thereon shall have been conveyed to a third party.

**Section 1.42. Right to Repair Act** shall mean and refer to O.C.G.A. § 8-2-35, et seq., as may be amended.

**Section 1.43. Rules and Regulations** shall mean the rules and regulations for the Community adopted by the Board of Directors, as may be amended from time to time.

**Section 1.44. Secure Electronic Signature** shall mean an electronic or digital method executed or adopted by a Person with the intent to be bound by or to authenticate a record, which is unique to the Person using it, is capable of verification, is under the sole control of the Person using it, and is linked to data in such a manner that if the data is changed, the electronic signature is invalidated.

**Section 1.45. Special Assessment** shall have the meaning specified in Section 5.4 of this Declaration and shall constitute an assessment uniformly levied by the Board against all Lots to fund an expense of the Association not included in the annual budget or to otherwise fund a shortfall in the operating account of the Association.

**Section 1.46. Specific Assessment** shall have the meaning specified in Section 5.5.

**Section 1.47. Supplemental Declaration** shall mean an amendment or supplement to this Declaration that imposes additional restrictions and obligations on the Community or any portion thereof.

**Section 1.48. Survey** shall mean the recorded plat(s) for the Community recorded in the Official Records, as amended.

**Section 1.49. Total Association Vote** shall mean all of the votes attributable to members of the Association (including votes of Declarant), and the consent of Declarant during the Development Period.

## **ARTICLE 2. PROPERTY SUBJECT TO THIS DECLARATION; CONVEYANCE AND PARTITION OF COMMON AREA**

**Section 2.1. Submitted Property.** The real property which is, by the recording of this Declaration, subject to the covenants and restrictions set forth in this Declaration is the real property described in Exhibit "A" attached hereto and incorporated herein by this reference.

**Section 2.2. Other Property.** Only the real property described in Exhibit "A" is made subject to this Declaration. However, by one (1) or more Supplemental Declaration, other real property may be subjected to this Declaration, as provided in Article 14 hereof.

**Section 2.3. Conveyance of Common Area by Declarant to the 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





Area to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section 2.3.

**Section 2.4. Removal of Improvements on Common Area by Declarant.** During the Development Period, Declarant shall have the right, privilege, and option from time to time to remove, add, reconfigure, relocate, modify, and alter any and all improvements located on the Common Area.

**Section 2.5. Partition of the Common Area.** The Common Area shall remain undivided, and no Owner or any other Person shall bring any action for partition or division of the whole or any part of the Common Area without the written consent of all Owners and all holders of all Mortgages encumbering any portion of the Community.

### **ARTICLE 3. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

**Section 3.1. Membership.** Every Person who is the record owner of a fee interest in any Lot, is subject to this Declaration shall automatically be a member in the Association. Membership shall not include Persons who hold a security interest only and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall go along with and may not be separated from ownership of any Lot.

**Section 3.2. 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 Association's secretary prior to any meeting. If the Association's 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 4. ASSOCIATION RIGHTS AND RESTRICTIONS; VARIANCES**

#### **Section 4.1. Association Rights and Restrictions.**

(a) **General.** 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:

(i) make reasonable Rules and Regulations governing the use of the Community, including the Lots and the Common Area;

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

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



(iv) 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, and to pay all taxes or other expenses with respect to same;

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

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

(vii) permanently or temporarily close any portion of the Common Area (excluding: (A) any portion of the Common Area the use of which is reasonably necessary for access to or from a Lot, or (B) any portion of the Common Area 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 Area by a Majority of the Total Association Vote, cast at a duly called special or annual meeting;

(viii) enter onto Lots for maintenance, emergency, security, or life-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 Section 4.1, an emergency justifying immediate entry onto 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 Subsection 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;

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

(x) designate one (1) company to provide exclusive trash removal services to the entire Community.

Notwithstanding anything to the contrary stated in the Community Instruments, the Association shall not exercise any authority that would impair the rights of Declarant under this Declaration or interfere with Declarant's development of, construction on, or marketing of any portion of the Community, or diminish the level of services being provided by the Association.

(b) Litigation. No judicial or administrative proceeding 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 litigation or proceeding which shall be submitted to the Owners for a vote along with the estimate of the total cost of the litigation or proceeding made by the attorney being retained by the Association for the litigation or proceeding. No capital contribution or reserve account funds shall be used for funding the costs of litigation or proceedings. The proposed litigation or proceeding, the budget, and the Special Assessment for litigation, must all be approved by a vote of the Owners representing at least three-fourths (3/4) of the Total Association Vote. This Subsection



shall not apply, however, to (i) actions involving imposition and collection of assessments as provided herein, (ii) actions brought by the Association to enforce any covenant 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.

**Section 4.2. Variances.** Notwithstanding anything to the contrary contained in this Declaration, the Board of Directors shall not grant an individual variance from any of the provisions of the Community Instruments unless such variance is approved by a vote of the Owners representing at least three-fourths (3/4) of the Total Association Vote.

## ARTICLE 5. ASSESSMENTS

**Section 5.1. Purpose of Assessment.** The assessments provided for herein shall be used for the general purposes of administering and operating the Area of Common Responsibility, 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 and allowing the Association to fulfill its duties and responsibilities as set forth in Community Instruments.

**Section 5.2. 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: (i) Annual Assessments or charges; (ii) Special Assessments, such assessments to be established and collected as hereinafter provided; and (iii) a Specific Assessment against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest not to exceed the maximum rate permitted by law per annum on the principal amount due, and costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, shall also be the personal obligation of every Person who is an Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for Owner's portion of each assessment coming due while he or she is the Owner of a Lot, and Owner's grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of a grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or by deed in lieu of foreclosure.

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

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

**Section 5.3. Computation of Annual Assessment.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Community during the coming year, which may include, if necessary, a capital contribution or reserve in accordance with a capital budget separately prepared.



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

**Section 5.4. Special Assessments.** In addition to the other assessments authorized herein, the Board may, at any time, levy a Special Assessment against all Owners to cover unbudgeted expenses or expenses in excess of those budgeted, notice of which shall be sent to all Owners. Until one hundred percent (100%) of the Community has been developed and conveyed to Owners, any such Special Assessment s must be approved by Declarant.

**Section 5.5. Specific Assessments.** The Board of Directors shall have the power to specifically assess specific Lots pursuant to this Section 5.5, in its discretion, as it shall deem appropriate. Failure of the Board to exercise its authority under this Section 5.5 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 5.5 in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section 5.5. Fines levied pursuant to Article 5 of the Bylaws, the costs and expenses of self-help, and the costs of maintenance performed by the Association which the Owner is responsible for under Article 9 shall be a Specific Assessment. The Board may also specifically assess Lots for the following Association expenses, except for expenses incurred for routine maintenance and repair of items that are the maintenance responsibility of the Association:

- (i) Any Common Expenses benefiting less than all of the Lots may be specifically assessed equitably, in the Board of Director's reasonable discretion, among all of the benefited Lots according to the respective benefit received.
- (ii) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot(s) may be specifically assessed by the Board of Directors against such Lot(s) based upon the conduct committed which occasioned any such Common Expenses.
- (iii) Any Common Expenses significantly disproportionately benefiting all the Lots may be specifically assessed equitably, in the Board of Director's reasonable discretion, among all of the benefited Lots according to the respective benefit received.
- (iv) Other expenses specifically contemplated as a Specific Assessment in this Declaration.

**Section 5.6. Lien for Assessments.** All assessments levied against any Lot, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall be secured by a lien on the Lot in favor of the Association from the time the sums become due and payable. The Association shall have the right, but not the obligation to evidence the existence of the lien by filing a notice of lien in the Official Records. The lien shall be superior to all other liens and encumbrances on the Lot, except for (i) liens for ad



valorem taxes; or (ii) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the Official Records and all amounts advanced under the terms of and secured by the Mortgage.

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

**Section 5.7. Effect of Nonpayment of Assessments: Remedies of the Association.** All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default, as follows:

(i) If any monthly installment of Annual Assessments or any part thereof is not paid in full by the tenth (10th) day of the month or if any other charge is not paid within ten (10) days of the due date, a late charge equal to the greater of Ten and 00/100 Dollars (\$10.00) or ten percent (10%) of the amount not paid may be imposed without further notice or warning to the delinquent Owner and interest at the rate of ten percent (10%) per annum or such higher rate as may be permitted by the applicable law shall accrue from the due date thereof.

(ii) If part payment of assessments and related charges is made, the amount received may be applied first to costs and reasonable attorneys' fees actually incurred, then to late charges, then to interest, then to delinquent assessments, and then to current assessments.

(iii) If assessments, fines or other charges or any part thereof due from an Owner remain delinquent and unpaid for a period greater than fifteen (15) days from the date due, a notice of delinquency may be given to that Owner stating that if the assessment, fine or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the Board of Directors may accelerate and declare immediately due all of that Owner's unpaid installments of the Annual Assessment and of any Special Assessment without any further notice being given to the delinquent Owner. Upon acceleration, that Owner shall thereby lose the privilege of paying the Annual Assessment in monthly installments for that fiscal year, if a monthly installment payment plan is offered by the Association.

(iv) If assessments and other charges or any part thereof remain unpaid more than thirty (30) days after they become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of this Declaration, the Bylaws, and Georgia law, including reasonable attorneys' fees actually incurred, and suspend the Owner and/or Occupant's right to vote and/or use the Common Area, including the right to bring or park vehicles on the Common Area or have guests bring or park vehicles on the Common Area. However, the Board may not limit pedestrian, medical, fire, police or other health, life-safety, service or emergency vehicle ingress or egress to or from the Lot or deny necessary parking of clearly and properly identified handicapped vehicles used by handicapped Owners or Occupants protected by the Fair Housing Amendments Act of 1988. Prior to suspending parking privileges, the Association shall provide the delinquent Owner or Occupant written notice of its intention to do so, sent by certified mail not less than ten (10) days' prior to the date of such suspension.

**Section 5.8. Commencement of Assessments.** Assessments shall commence as to Lots when the Board of Directors first determines a budget and levies assessments. Except as otherwise provided for herein, the assessments provided for herein shall commence as to each individual Lot on the date that such Lot has been improved with a Residence for which a certificate of occupancy has been issued and has been conveyed to an Owner who intends to occupy or lease the Residence, or, if the Residence is occupied as a residential dwelling before such conveyance, the date of such occupancy. Any Lot which has been approved by Declarant for use as a model home for marketing and sales purposes shall



not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant or any other person, so long as such Residence is approved for use as a model home and is not being occupied for residential purposes. Notwithstanding anything to the contrary herein, Declarant shall not be liable or responsible for the payment of any assessments on the Lots that it owns.

**Section 5.9. Initiation Fee.** The purchaser of each Lot at the closing of the sale or resale of a Lot shall pay to the Association an initiation fee in the amount determined by the Board. The initiation fee shall not be deemed an advance payment of Annual Assessments or Special Assessments. The Board shall have discretion to increase the initiation fee by resolution of the Board; provided, however, the initiation fee shall not be changed by the Board without Declarant's consent during the Development Period. Notwithstanding anything to the contrary herein, the initiation fee shall not be due from: (i) any grantee who is the Domestic Partner, spouse or former spouse of the grantor; (ii) any grantee that is a wholly-owned entity of the grantor; (iii) any grantee to whom a Lot is conveyed by a will or through the law of intestacy; or (iv) any grantee of a Lot who obtains title pursuant to judicial or nonjudicial foreclosure (or deed in lieu of foreclosure) of any first Mortgage of record or secondary purchase money mortgage of record (provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Lot). The initiation fee shall be an assessment, which is the personal obligation of the Owner, and shall constitute a lien, which may be collected as provided in this Article 5.

**Section 5.10. Statement of Account.** Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein.

**Section 5.11. Capital Reserve Budget and Contribution.** The Board of Directors shall annually prepare a capital reserve budget which shall take into account the number and nature of replaceable assets, including the roads within the Community which are not otherwise maintained on an ongoing basis by a governmental entity, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital reserve contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital reserve budget, with respect both to amount and timing by equal Annual Assessments over the period of the budget. The annual capital reserve contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in Section 5.3 hereof. A copy of the capital reserve budget shall be distributed to each member in the same manner as the operating budget.

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

**Section 5.12. Budget Deficits During the Development Period.** During the Development Period, Declarant may, but shall have no obligation to, (i) advance funds to the Association in the form of a loan or gift sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the annual, special and a Specific Assessment collected by the Association in any fiscal year, and such advances, if in the form of a loan, shall be evidenced by a promissory note or notes from the Association in favor of Declarant and shall not be deemed a conflict of interest by the directors and officers appointed by Declarant; provided, however, the failure to execute a note shall in no way diminish or eliminate the obligation of the Association to repay to Declarant all sums which Declarant has loaned the Association, or (ii) 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 Area or any of the improvements maintained by the Association shall be given in connection with such loan.

## **ARTICLE 6. ARCHITECTURAL STANDARDS**

**Section 6.1. General.** No structure or improvement, including, but not but not limited to, a Residence or outbuilding (as described in Section 7.27 below), playhouse or play equipment, fence, wall or swimming pool shall be placed, erected, installed, or maintained upon any Lot, and no construction or modification (which shall include staking, clearing, excavation, grading and other site work, exterior alteration or modification of existing improvements, and planting or removal of plants, trees, or shrubs other than as may be permitted in Articles 7, 8 and 10, but shall exclude the replacement of annual or perennial flowers in pre-approved planting beds and the replacement of dead or diseased trees or shrubs with like plant material) shall take place except in strict compliance with this Article 6 and until complete final plans and specifications for the proposed construction and/or modification showing the nature, kind, shape, height, materials, basic exterior finishes and colors, location and floor plan have been submitted to and approved by the Architectural Review Committee. For the purposes of this Article 6, a change in the exterior paint color of a Residence or other exterior redecorating shall be considered an exterior alteration. Notwithstanding the foregoing, nothing contained in this Declaration shall be construed to limit the right of an Owner to remodel the interior of a Residence or to paint the interior of Owner's Residence any color desired; provided, however, modifications or alterations to the interior of screened porches, patios, and any other portion of a Residence visible from outside the Lot shall be subject to the approval by the Architectural Review Committee.

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

This Article shall not apply to the activities of Declarant or its affiliates or to improvements to the Common Area made by or on behalf of the Association. This Article may not be amended without the written consent of Declarant until the expiration of the Development Period.

**Section 6.2. Architectural Review Committee.** Declarant shall have the right to appoint all members of the Architectural Review Committee during the Development Period. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant and recorded in the Official Records. After the expiration of the Development Period, the Board of Directors shall either appoint the members of the Architectural Review Committee or adopt a resolution making the Board of Directors the Architectural Review Committee. The Board may employ for the Architectural Review Committee architects, engineers, or other Persons necessary to enable the Architectural Review Committee to perform its review. The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, who shall have full authority to act on behalf of the Architectural Review Committee for all matters delegated.



**Section 6.3. Guidelines and Procedures.** Declarant may prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") that shall be applicable to all construction activities within the Community. The Design Guidelines may contain general provisions applicable to all of the Community, as well as specific provisions which vary from one portion of the Community to another depending upon the location, unique characteristics, and intended use.

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

Any amendments to the Design Guidelines adopted from time to time by the Architectural Review Committee in accordance with this Section 6.3 shall apply to construction and modifications approved after the date of such amendment only, and shall not apply to plans or specifications previously approved or require modifications to or removal of structures previously approved by the Architectural Review Committee.

In the event that the Architectural Review Committee fails to approve or to disapprove any application within thirty (30) days after submission in writing to, and actual receipt by, the Architectural Review Committee of all information and materials reasonably requested, the application shall be deemed approved. However no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the Architectural Review Committee pursuant to Section 6.7 below.

The Architectural Review Committee shall be the only judge of the plans with regard to the requirements of this Article 6 and may withhold approval for any reason, including purely aesthetic considerations. The Architectural Review Committee shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. If an Owner does not comply with this Section 6.3, the Board may record in the Official Records a notice of violation naming the violating Owner in addition to any other available remedies.

**Section 6.4. DISCLAIMER. THE ARCHITECTURAL REVIEW COMMITTEE AND THE BOARD OF DIRECTORS DO NOT WARRANT OR REPRESENT, THAT THEIR DECISIONS UNDER THIS ARTICLE 6 CONSTITUTE, AND THEIR DECISIONS SHALL NOT BE INTERPRETED AS CONSTITUTING, AN APPROVAL AS TO COMPLIANCE WITH ANY BUILDING CODE, REGULATION OR ORDINANCE, OR ANY OTHER CODE, REGULATION, ORDINANCE OR LAW. DECLARANT, THE BOARD OF DIRECTORS AND THE ARCHITECTURAL REVIEW COMMITTEE SHALL NOT BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, OR FOR ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS. IN ADDITION, DECLARANT, THE BOARD OF DIRECTORS, THE ARCHITECTURAL REVIEW COMMITTEE OR MEMBER OF ANY OF THE FOREGOING SHALL NOT BE HELD LIABLE FOR ANY INJURY, DAMAGES OR LOSS ARISING OUT OF THE MANNER OR QUALITY OF APPROVED CONSTRUCTION ON OR MODIFICATIONS TO ANY LOT.**





**Section 6.5. No Waiver.** The approval of the Architectural Review Committee of any proposals, plans and specifications, or drawings, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or other matters later submitted for approval or consent.

**Section 6.6. No Waiver of Future Approvals.** The approval of either the Architectural Review Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters subsequently or additionally submitted for approval or consent.

**Section 6.7. Variance.** The Architectural Review Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted Rules and Regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall: (i) be effective unless in writing; (ii) be contrary to the restrictions set forth in this Declaration; or (iii) estop the Architectural Review Committee from denying a variance in other circumstances. For purposes of this Section 6.7, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

**Section 6.8. Enforcement.** Any construction, alteration, or other work done in violation of this Article 6 shall be deemed to be nonconforming. Upon written request from the Board or Declarant, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the land 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, fines, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Lot and collected as a Specific Assessment pursuant to Section 5.5 hereof.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article 6 and the Design Guidelines may be excluded by the Board from the Community, subject to the notice and hearing procedures contained in the Bylaws. In such event, the Association and its officers and directors shall not be held liable to any Person for exercising the rights granted by this Section 6.8.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article 6 and the decisions of the Architectural Review Committee.

**Section 6.9. Commencement of Construction.** All changes, modifications and improvements approved by the Architectural Review Committee, must be commenced within six (6) months from the date of approval. If not commenced within six (6) months from the date of such approval, then such approval shall be deemed revoked by the Architectural Review Committee, unless the Architectural Review Committee gives a written extension for commencing the work. Except for the new construction (or reconstruction after a major casualty) of a Residence and related improvements on a Lot which shall be completed in its entirety using best reasonable efforts within a time period established by the Architectural Review Committee, all work approved by the Architectural Review Committee shall be completed in its entirety within ninety (90) days from the date of commencement, unless otherwise agreed in writing by the Architectural Review Committee. All approved changes, modifications, and improvements must be completed in their entirety. An Owner may not construct only a portion or part of an approved change, modification, or improvement. Notwithstanding anything to the contrary stated herein or the Design Guidelines, no changes, modifications,



and improvements approved by the Architectural Review Committee shall be commenced until the Owner conspicuously posts an approval permit and such permit shall remain conspicuously until all construction activities are completed. Said approval permit shall serve only to provide notice to the Community that the change, modification, and/or improvement being made to a Lot has been approved by the Architectural Review Committee, and shall be in addition to, and not in lieu of, all necessary permits or approvals required by Gwinnett County or other governmental authorities.

## **ARTICLE 7. USE RESTRICTIONS AND RULES**

**Section 7.1. General.** This Article, beginning at Section 7.2, sets out certain use restrictions that must be complied with by all Owners and Occupants of Lots. These use restrictions may only be amended in the manner provided in Section 16.3 hereof, 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 and Regulations shall be distributed to all Owners and Occupants of Lots until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the Total Association Vote and the consent of Declarant (during the Development Period). Notwithstanding the above, during the Development Period, no Rules and Regulations that affect Declarant may be adopted, modified, or deleted without Declarant's written consent.

**Section 7.2. Residential Use.** Except as otherwise expressly permitted in this Declaration, each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Community, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing in a Lot may conduct such ancillary business activities within the Residence so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Residence; (ii) the business activity does not involve Persons coming onto the Community who do not reside in the Community or door to door solicitation of residents of the Community (other than deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services); (iii) the business activity conforms to all zoning requirements for the Community; (iv) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (v) 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 life-safety of other residents of the Community, as may be determined in the sole discretion of the Board of Directors; and (vi) the business activity does not result in a materially greater use of the Common Area facilities or Association services.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full or part time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity. Notwithstanding the above, the use of a Lot by an onsite management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this Section 7.2.

**Section 7.3. Number of Occupants.** The maximum number of Occupants in a Residence within the Community shall be limited to two (2) people per bedroom. "Occupancy," for purposes hereof, shall be defined as staying overnight in a Residence within the Community for a total of more than thirty (30) days, either consecutive or non-consecutive, in any one (1) year period. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Acts or any amendments thereto.



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

**Section 7.4. Leasing.** In order to: (i) protect the equity of the Owners; and (ii) preserve the character of the Community as a community of predominantly owner-occupied homes, the leasing of a Residence shall be governed by the restrictions imposed by this Section 7.4. Except as provided in this Section 7.4, the leasing of a Residence shall be prohibited.

(a) Definitions. The terms "leasing", "lease" or "leased" shall mean the regular, exclusive occupancy of a home by any person(s) other than the Owner, for which the Owner receives any consideration or benefit including, but not limited to, a fee, service, or gratuity. For purposes hereof, occupancy by a roommate of an Owner-Occupant shall not constitute leasing.

(b) Leasing Permits. In addition to an Owner having the right to request a Leasing Permit, a Person who has a written contract to purchase a Residence ("Buyer") shall have a right to apply for and receive a Leasing Permit. The request of an Owner or Buyer for a Leasing Permit for a Residence shall be approved if current, outstanding Leasing Permits (excluding Residences that are owned and leased by Declarant) have not been issued for more than the greater of: (i) Ten Percent (10%) of the total number of Residences in the Community, or (ii) five (5) Residences in the Community ("Leasing Cap"). An Owner who owes the Association any delinquent assessments, fines, or other charges shall not be eligible to receive a Leasing Permit nor shall any Buyer of a Residence be eligible to receive a Leasing Permit if the Owner of such Residence owes the Association any delinquent assessments, fines, or other charges. The Board shall also have the right, but not the obligation, in its discretion to deny a Leasing Permit to an Owner or the Buyer of an Owner's Residence if the Owner or the Owner's Permittee is in violation of the Community Instruments. A Leasing Permit shall be automatically revoked upon the happening of any of the following events:

(i) the failure of a Buyer to close on the acquisition of the Residence as contemplated in the purchase and sale agreement or in any amendment thereto, for any reason whatsoever;

(ii) the failure of an Owner to lease Owner's Residence within one hundred and twenty (120) days of the Leasing Permit having been issued or the failure of a Buyer to lease Owner's Residence within one hundred and twenty days (120) days after the date of the closing of the Residence;

(iii) the failure of an Owner to have Owner's Residence leased for any consecutive one hundred and eighty (180) day period thereafter;

(iv) the transfer or conveyance of the Residence to a third party unless there is an existing binding lease agreement for the Residence at the time of the transfer and conveyance that is assigned to the new Owner and remains in effect after the transfer or conveyance;

(v) when an Owner fails to pay all delinquent assessments, fines, or other charges owed to the Association on or before the date being ten (10) days after the Association sends a written notice to the Owner stating that the Owner is more than thirty (30) days delinquent and that the Leasing Permit shall be revoked unless payment is received on or before such date being ten (10) days after the Association sends the written notice; and



(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.

The Board shall also have the right, but not the obligation, in its discretion, to revoke an Owner's Leasing Permit if the Owner or the Owner's Permittee violate the Community Instruments in a non-monetary manner; provided, however, the Board shall first provide written notice to the Owner and provide the Owner with a right to hearing in the same manner as for fines as set forth in the Bylaws. The Leasing Permit shall be revoked for such non-monetary violation if the Board so determines after a hearing, or upon the last day of the Owner's right to request a hearing if the Owner fails to request a hearing.

An Owner who has been placed on the waiting list for a Leasing Permit may not transfer or assign Owner's position on the waiting list. The Board may remove an Owner from the waiting list of the Owner if more than thirty (30) days delinquent in the payment of any assessments, fines, or other charges owed to the Association or if the Owner or the Owner's Permittee violate the Community Instruments in a non-monetary manner.

(c) Hardship Leasing Permit. 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 Hardship Leasing Permit is approved (including, but not limited to, the inability of the Community to meet eligibility requirements for financing in the secondary mortgage market), (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 Residence was placed on the market, sell the Residence after having made reasonable efforts to do so except at a price below the current appraised market value; (B) where the Owner dies and the Residence 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 Residence. 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 Hardship Leasing Permit, the Owner is approved for and receives a Leasing Permit. The Board of Directors may revoke a Hardship Leasing Permit if an Owner fails to pay all delinquent assessments, fines, or other charges owed to the Association on or before the date being ten (10) days after the Association sends a written notice to the Owner stating that the Owner is more than thirty (30) days delinquent. The Board shall also have the right, but not the obligation, in its discretion, to revoke an Owner's Hardship Leasing Permit if the Owner or the Owner's Permittee violate in a non-monetary manner the Community Instruments, provided that the Board shall first provide written notice to the Owner and provide the Owner with a right to hearing in the same manner as for fines as set forth in the Bylaws. The Hardship Leasing Permit shall be revoked for such non-monetary violation if the Board so determines after a hearing, or upon the last day of the Owner's right to request a hearing if the Owner fails to request a hearing.

(d) Leasing Provisions. Leasing which is authorized by Leasing Permit, shall be governed by the following provisions:

(i) Notice. At least seven (7) days prior to entering into the lease of a Residence, the Owner shall provide the Board with a copy of the proposed lease agreement. 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. 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. Nothing herein shall be construed as giving the Association the right to approve



or disapprove a proposed tenant; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(ii) General.

(A) A Residence may be leased (or subleased or assigned) only in its entirety; no fraction or portion of a Residence may be leased (or subleased or assigned) without prior written Board approval.

(B) 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 (but in no event less than thirty (30) days).

(C) A leased Residence may be subleased or assigned; provided, however, such sublease or assignment shall be for the remainder of the term of the initial lease (or any remaining extension thereof) and in no event shall be for less than thirty (30) days.

(D) Within ten (10) days after executing a lease agreement for the lease of a Residence, the Owner shall provide the Board with a copy of the lease and the name of the tenant and all other people occupying the Residence. The Owner must provide the tenant copies of the Community Instruments.

(E) Within ten (10) days after the execution a sublease or assignment agreement for a Residence, the Owner shall provide the Board with a copy of the sublease or assignment agreement and the name of the sub-tenant or assignee and all other people occupying the Residence. The Owner must provide the sub-tenant or assignee copies of the Community Instruments.

(iii) Compliance with Community Instruments. The tenant shall comply with all provisions of the Community Instruments and shall control the conduct of all other Occupants and Permittees of the leased Residence in order to ensure such compliance. The Owner shall cause all Occupants of Owner's Residence to comply with the Community Instruments, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Residence are fully liable and may be sanctioned for any such violation. If the tenant, or a Person living with the tenant, violates the Community Instruments for which a fine is imposed, notice of the violation shall be given to the Owner and the tenant, and such fine may be assessed against the tenant in accordance with Article 5 of the Bylaws. If the fine is not paid by the tenant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the tenant's failure to pay the fine. Unpaid fines shall constitute a lien against the Residence.

Any violation of the Community Instruments by the tenant, any Occupant, or any Permittee, 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 tenant 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 tenant for breaches resulting from the violation of the Community Instruments, including the power and authority to evict the tenant as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms of this Declaration. If the Association proceeds to evict the tenant, any costs (including reasonable attorneys' fees and expenses that are actually incurred) associated with the eviction shall be an assessment and lien against the Lot of the Owner in violation.

(e) Liability for Assessments. When an Owner who is leasing Owner's Residence 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 tenant during the period of delinquency. Upon request by the Board, tenant 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 tenant. However, tenant shall not be required to 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 tenant shall reduce, by the same amount, tenant's obligation to make monthly rental payments to lessor. If tenant fails to comply with the Board's request to pay assessments or other charges, tenant shall pay to the Association all amounts authorized under the Declaration as if tenant were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which the Owner would otherwise be responsible.

(f) Use of Common Area. An Owner transfers and assigns to the tenant, for the term of the lease of Owner's Residence, any and all rights and privileges that the Owner has to use the Common Area as a result of owning that Residence, including, but not limited to, the use of any and all recreational facilities and other amenities.

(g) Required Lease Provisions. Any lease of a Residence shall be required to contain or incorporate by reference the terms set forth in Subsections (d) and (e) above. If such language is not expressly contained or incorporated by reference therein, then such language shall be incorporated into the lease by the existence of this covenant, and the tenant, by occupancy of the Residence, agrees to the applicability of this covenant and incorporation of the above-referenced language into the lease.

(h) Applicability of Section 7.4. Notwithstanding the above, this Section 7.4 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 Development Period), the Association, or the holder of any first recorded Mortgage on a Residence who becomes the Owner of a Residence through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage (collectively the "Exempt Owners"). Such Exempt Owners shall be permitted to lease a Residence without first obtaining a permit in accordance with this Article and such Residences shall not be considered as being leased in determining the maximum number of Residences that may be leased in accordance with this Article. Notwithstanding the foregoing, Subsections (d) and (e) above (except Subsection (b)(ii) above) shall apply to all such leasing transactions; provided, however, any such leases shall be required to have an initial term of at least thirty (30) days. For the purposes of clarification, this Section 7.4 shall apply to any Person that acquires a Residence from an Exempt Owner (unless such Person is itself an Exempt Owner), including the obligations to obtain a Leasing Permit to lease the acquired Residence as required in this Section 7.4.

**Section 7.5. Occupants Bound.** All provisions of the Community Instruments that govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants of Residences and guests and invitees of Occupants or Owners. The Owner shall be responsible for insuring that the Occupant, and the guests, invitees and licensees of the Owner or the Occupant strictly comply with all provisions of the Community Instruments. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

**Section 7.6. Vehicles; Parking.**

(a) General. Vehicles shall be parked only in parking areas serving a Lot or other designated parking areas, if any, established by the Board. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, golf carts, trailers, trucks, campers, buses, vans and automobiles. The term "parking areas serving a Lot" shall refer to the number of garage parking spaces, and if and only if the Owner or Occupants of a Lot have more vehicles than the number of garage parking spaces, then those excess cars, trucks or vans (limited to 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) which are an Occupant's primary means of transportation on a regular basis may be parked on the driveway located on the Lot. Notwithstanding anything to the contrary stated in this Declaration, with respect to a parking on a driveway, no disabled or stored vehicles (as described in Section 7.6(b) below) and no recreational vehicles (including, but not limited to, motor homes, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, golf carts, trailers, campers, buses, and trucks with a load capacity of one (1) ton or more) may be parked on a driveway located on a Lot. All parking within the Community shall be subject to such other Rules and Regulations as the Board may adopt from time to time.

(b) Disabled and Stored Vehicles. No vehicle may be left upon any portion of the Community, except in areas described in Subsection (a) above, for a period longer than five (5) days if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle may be removed from the Community by the Board of Directors or the appropriate authority of the City of Norcross and/or Gwinnett County, Georgia. Any towed vehicle, boat, personal watercraft, recreational vehicle, motor home, trailer, motorcycle, mini-bike, scooter, go-cart, golf cart, commercial truck, camper, bus or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage, for periods longer than twenty-four (24) hours may be removed from the Community by the Board of Directors (the temporary removal of such vehicle to break the continuity of the twenty-four (24) period shall not be sufficient to establish compliance with this restriction). Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. No eighteen wheel trucks or the cabs of such trucks or trucks with a load capacity in excess of three-quarters (3/4) of a ton shall be parked, kept or stored within the Community except during the time reasonably necessary to provide service or delivery within the Community.

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

(d) Remedies of the Association for Noncompliance. If any vehicle is parked on any portion of the Community in violation of this Section 7.6 or in violation of the Rules and Regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the Person that will do the towing and the name and telephone number of a Person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked on the private streets or alleys within the Community such that it is blocking another vehicle or access to a Lot, is obstructing the flow of traffic, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this Section 7.6, Declarant and its affiliates, the Association and its affiliates, and any director, officer, employee or agent of any of the foregoing shall not be liable to any Person for any claim of damage as a result of the towing activity. The Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

(e) Exemption to Declarant. Notwithstanding the foregoing, Declarant and its respective agents, subcontractors and assigns, shall have the right, during regular business hours, to park vehicles





on any and all streets within the Community as needed in order to facilitate the construction, development and build out of the Community.

**Section 7.7. Traffic Regulations.** All vehicular traffic on any streets or alleys in the Community shall be subject to the provisions of the state and local laws concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable Rules and Regulations governing vehicular and pedestrian traffic, including reasonable life-safety measures and speed limits and including modifications of those in force on public streets, within the Community. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of state and local laws and such Rules and Regulations promulgated by the Association, the Rules and Regulations of the Association shall govern. Only drivers properly licensed to operate motor vehicles on the public roads within the State of Georgia may operate any type of motor vehicle within the Community. All vehicles of any kind and nature which are operated on the streets or alleys in the Community shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all Owners and Occupants.

**Section 7.8. Animals and Pets.** No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any portion of the Community; provided, however, an Owner or Occupant may keep up to a total of three (3) dogs and three (3) cats per Lot, unless otherwise permitted by the Board of Directors in its sole and absolute discretion. No pets shall be kept, bred or maintained for any commercial purpose, and no improvement for the care, housing, or confinement of any pet, such as dog houses and dog runs, shall be constructed or maintained on any part of the Community. Pets must be kept on a leash at all times when on the Common Area and on a Lot of another Owner. When on the Common Area or a Lot of another Owner, pets must be kept on a leash (or the physical control of a responsible person). Feces left by pets upon any portion of the Community must be removed by the owner of the pet or the person responsible for the pet.

No potbellied pigs, snakes, Pit Bulls (including, but not limited to, American Pit Bull Terriers, American Staffordshire Terriers, Staffordshire Bull Terriers, and Bull Terriers), Rotweillers, Doberman Pinschers (or any mixed breed dog where the predominant breed, in the sole and absolute discretion of the Board of Directors, is any of the foregoing animals), 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. Furthermore, any pet that endangers the health of any Owner or Occupant (in the Board's sole discretion), makes objectionable noise, or constitutes a nuisance or inconvenience to the Owners or Occupants or to the owner of any property located adjacent to the Community, may be permanently removed by the Board from the Community upon seven (7) days written notice to the owner of such pet. If the Owner or Occupant fails to remove the pet from the Community, the Board may remove the pet. Notwithstanding the foregoing, any pet which, in the Board's sole discretion, presents an immediate danger to the health, life-safety or property of any Occupant of the Community may be removed by the Board without prior written notice to the pet's owner.

All Owners and Occupants keeping pets within the Community shall comply with all applicable governmental ordinances and regulations. Without prejudice to the Board's right to remove any such household pets, the Board may prohibit a household pet that has caused damage or injury from being walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall also be registered, licensed and inoculated as required by law. Furthermore, 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 7.9. Signs.** Except as may be provided for in this Declaration or as may be required by legal proceedings, and except for signs which may be erected by Declarant, no signs, advertising posters,





"For Sale," "For Rent" and other similar signs, flyers, political placards or billboards of any kind shall be erected or placed by an Owner, Occupant or other Person, or permitted to remain on the Community without the prior written consent of the Board or its designee. Notwithstanding the foregoing, the following signs may be displayed on a Lot without the prior written consent of the Board or its designee: (i) one (1) professionally lettered security sign not to exceed four inches (4") by four inches (4") in size; or (ii) one (1) professionally lettered "For Sale" sign not to exceed two feet (2') by two feet (2') in size or a "For Sale" sign provided by a professional Realtor®. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. In addition, the Board shall also have the authority to adopt Rules and Regulations permitting temporary signs on Lots announcing birthdays, graduations or other events for limited periods of time. No advertising, directional, or vendor signs shall be permitted within the Community except as authorized by Declarant.

**Section 7.10. Antennas and Satellite Dishes.** Except as provided below and as provided for in the Rules and Regulations, 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, the Association shall have the right to erect, construct, and maintain such devices. The following shall apply to all Owners:

(i) No transmission antenna of any kind may be erected anywhere on the Community without written approval of the Board of Directors or the Architectural Review Committee.

(ii) 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.

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

Moreover, for so long as not prohibited by any FCC rule, 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 located on the front or side of any Residence that is visible from the street or another Residence. In the event of a transfer of a Lot that includes the satellite dish or antenna, the grantee shall assume all responsibility for the satellite dish or antenna and shall comply with Community Documents regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dish or antenna.

**Section 7.11. Firearms and Fireworks.** The use, display, or discharge of firearms or fireworks on any portion of the Community is prohibited except with prior written approval of the Association; provided, however, the display of lawful firearms in the Community is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Area 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. § 25-10-1, as amended.

**Section 7.12. Garbage, Rubbish, Trash and Recyclables.** As provided in Section 4.1(a)(x), the Board shall be authorized to designate one (1) company to provide exclusive trash removal services to the entire Community on a certain designated day(s). All rubbish, trash, and garbage shall be regularly removed from a Lot and shall not be allowed to accumulate thereon. Garbage receptacles shall be screened or concealed from view of neighboring Lots and the street on which the Lot fronts except on the day of garbage pick-up in which event the garbage containers may be left at the curb for a period not to exceed twenty-four (24) consecutive hours. No garbage or trash shall be placed on the Common Area, temporarily or otherwise,



except in sealed bags placed in trash cans or proper receptacles designated by the Board for collection, if any. This Section 7.12 is not applicable to debris, rubbish, trash, and garbage related to construction, provided that all such construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate unreasonably.

**Section 7.13. Clotheslines, Garbage Cans, Woodpiles, Recreational and Other Equipment.**

All clotheslines, garbage cans, recycling containers, woodpiles, and related equipment and other similar items shall be located or screened so as to be concealed from view from any street or road. All construction debris, rubbish, trash, recyclables, and garbage shall be regularly removed and shall not be allowed to accumulate.

**Section 7.14. Fences.** Other than fences constructed as part of the initial approved construction of the improvements on a Lot by Declarant, no fence, fencing type barrier of any kind including fencing enclosures for pets shall be placed, erected, allowed, or maintained upon any portion of the Community without the prior written consent of the Architectural Review Committee, with the exception that underground electronic fencing shall be allowed. No Owner shall erect or place any fence on or along a common property line, where such property line abuts Common Area, except with the prior written consent of the Architectural Review Committee or as installed by Declarant.

**Section 7.15. Air Conditioning Units.** No window air conditioning units may be installed on any Lot. Condensing units for air conditioners shall only be located in the rear or along the side of a Residence.

**Section 7.16. Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any Residence. Exterior sculptures, benches, fountains, flags, and similar items may not be placed in the front yard of a Lot or on the front exterior of a Residence without the prior written approval of the Architectural Review Committee.

**Section 7.17. Flags.** Except for flags which may be installed by Declarant, no flags may be displayed on any Lot without prior written approval in accordance with the provisions of Article 6 of this Declaration or as may be otherwise permitted in the Architectural Guidelines or this Section 7.17. No approval shall be required to display the flag of the United States of America and the current flag of the State of Georgia on the Lot in accordance with the provisions of the U.S. Flag Code (36 US Code 10) and usual and customary practice. The Board of Directors may promulgate reasonable Rules and Regulations with respect to the display of flags in the Community, including, without limitation, regulating the size of flags that may be displayed and imposing reasonable time, place and manner restrictions pertaining to the display of the United States flag; provided, however, the Association shall not enact any Rule or Regulation which has the effect of prohibiting any Owner from displaying the flag of the United States of America on a Lot in contravention of the Freedom to Display the American Flag Act of 2005.

**Section 7.18. Decks, Patios and Porches.** No laundry, garments, towels or objects other than potted plants, grills and patio furniture, shall be placed on a deck, patio or porch, except as may be authorized by the Board of Directors. Notwithstanding the foregoing, patio furniture made of plastic material shall not be placed on a front porch. In addition, objects shall not be permitted to hang over or be attached to any deck, patio or porch or to otherwise protrude outside of the vertical plane formed by the exterior surface of a deck, patio or porch. No deck, patio or porch shall be enclosed without prior approval in accordance with the provisions of Article 6 of this Declaration.

**Section 7.19. Utility Lines.** Except as may be permitted under and pursuant to Article 6 of this Declaration, no overhead utility lines, including lines for cable television, shall be installed within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.



**Section 7.20. Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on a Lot unless approved in accordance with the provisions of Article 6 of this Declaration.

**Section 7.21. Entry Features.** Owners shall not alter, remove or add improvements to any entry features or streetscapes constructed on any Lot in connection with the original development of the Community, or any part of any easement area associated therewith without prior approval in accordance with the provisions of Article 6 of this Declaration.

**Section 7.22. Tree Removal.** No trees located on a Lot having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) and a height of more than ten (10) feet above the ground shall be removed without the prior written consent of the Architectural Review Committee, except for (i) diseased or dead trees; (ii) trees needing to be removed to promote the growth of other trees or for life-safety reasons; (iii) trees the main trunk of which are within ten (10) feet of the Residence, driveway, or walkways constructed or to be constructed on a Lot. Owners acknowledge that there may also be laws restricting tree removal contained in Gwinnett County ordinances, and in the event of any conflict between such laws and between such ordinances and this Declaration, the more restrictive provisions shall apply. Owner shall provide the Board with documentation explaining why a tree meeting requirements (i) or (ii) needs to be removed (such as a letter from an arborist) prior to removing such tree. This provision shall not apply to the removal of trees by Declarant, or the Association. Notwithstanding anything to the contrary stated in this Declaration, in the event a diseased or dead tree located on the Common Area that was originally planted by Declarant is removed by the Association, the Association shall replace such removed tree with one of the same species and similar size if reasonably available.

**Section 7.23. Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, storm drains or by installation of fencing. Declarant hereby reserve a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 7.24. Sight Distance at Intersections.** All property located at street intersections and at the intersections of streets and driveways shall be landscaped so as to permit safe sight across the corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight distance problem.

**Section 7.25. Boundary Line Changes.** Boundaries lines between adjoining Lots may be relocated with the consent of the Owners of the affected Lots, provided any such relocation does not violate applicable subdivision and/or zoning regulations.

**Section 7.26. Subdivision of Lots.** 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 reserve the right to subdivide, combine and/or 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 7.27. Outbuildings.** No structure of a temporary character, trailer, tent, shack, carport, storage structure, garage, barn, or other outbuilding shall be placed, erected, allowed or maintained by any Owner or Occupant on any portion of the Community, other than by Declarant (during the Development Period), at any time, either temporarily or permanently, without the written approval of the Board. Any sheds, tool storage areas, workshops or outbuildings approved by the Board must be consistent in design materials



and color with the Residence on the Lot. Each Lot shall be restricted to only one (1) outbuilding. No metal buildings will be allowed in the Community. In no event shall any trailers, campers, vehicles, shacks, tents, any garages (attached and detached), barns or other structures be used as a residential dwelling or living space in any manner whatsoever, either temporarily or permanently, within the Community, without the prior approval of the Board. However, this Section shall not be construed to prevent Declarant, and its respective agents, subcontractors and assigns engaged in the development, construction, marketing, property management or sales with respect to the Community from using sheds, trailers or other temporary structures for any of the foregoing purposes. In addition, nothing in this Declaration shall be construed to prevent Declarant from developing, constructing, marketing, or maintaining model homes or speculative housing within the Community.

**Section 7.28. Swimming Pools.** No above-ground swimming pool shall be erected, constructed, or installed on any Lot. No in-ground swimming pool or spa shall be erected, constructed or installed on any Lot unless its design, location and placement are approved by the Architectural Review Committee.

**Section 7.29. Mailboxes.** The Community will contain a central mailbox area and/or mailbox kiosk area as determined by the Board or as installed by Declarant, and maintained by the Association.

**Section 7.30. Address Markers.** All address markers and/or address posts shall be of the same type and color as originally installed on a Lot and any modification to or change in address markers and/or address posts shall require the prior written approval of the Architectural Review Committee pursuant to Article 6 hereof.

**Section 7.31. Recreational Equipment.** No recreational or playground equipment including, but not limited to, swing sets, jungle gyms, play houses, trampolines, tennis courts, and basketball goals, shall be erected, constructed, or installed on any Lot unless its location, design, and type are approved by the Architectural Review Committee.

**Section 7.32. Window Treatments.** All window treatments visible from the exterior of the front of such Residence shall be white, off-white or another color approved in writing by the Architectural Review Committee. In no event should bed sheets, blankets, plastic, paper, foil or similar type items be used as window treatments.

**Section 7.33. 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 Owner's car or other motor vehicle on any portion of the Community, other than in the garage, unless the maximum number of cars or similarly sized motor vehicles which can be parked in the garage according to its design capacity are already parked in said garage. Garage doors shall remain closed at all times, except for necessary use, ingress, and egress. 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 7.34. Garage Sales.** No garage sale, carport sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Community without the prior written consent of the Board of Directors. If so permitted, any such activities shall be subject to all reasonable conditions that the Board may impose.

**Section 7.35. Lighting.** Except as may be permitted by the Architectural Review Committee, exterior lighting and decorations visible from the street shall not be permitted except for (i) approved lighting as originally installed on a Lot; (ii) street lights in conformity with an established street lighting program for the Community; and (iii) seasonal decorative lights and decorations between November 15th and January 10th of the following year.



**Section 7.36. Sidewalks.** Other than sidewalks and walkways constructed in the Community by Declarant, all sidewalks and walkways are subject to approval or disapproval under Article 6 herein.

**Section 7.37. Erosion Control and Contamination.** No activity which may create erosion or siltation problems in the Community shall be undertaken on any Lot without the prior written approval of the Architectural Review Committee or its designee, of plans and specifications for the prevention and control of such erosion or siltation. Such plans and specifications shall be designed by a professional engineer licensed in the State of Georgia and all costs and expenses related thereto shall be borne exclusively by the Owner of such Lot. The Architectural Review Committee or its designee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include, by way of example and not of limitation, physical devices for controlling the run-off and drainage of water, special precautions in grading, clean-up activities and requiring landscaping as provided for in this Section. No activity which results in contamination of or any damage to any stream, water course or any other Lot shall be conducted on any Lot, and each Owner shall be liable for all resulting damages from such activity and for restoration of a property damaged from contamination resulting from or attributable to such activity. In addition, prior to commencing any improvements on a Lot, the Owner of such Lot and any builders, subcontractors, or other agents of such Owner, shall fulfill their obligations to comply with the requirements of the State of Georgia Department of Natural Resources, Environmental Protection Division or any other governmental agency having jurisdiction thereof.

**Section 7.38. Buffer and Improvement Setbacks.** The Community may contain setbacks, undisturbed buffers, zoning buffers, stream buffers, and/or undisturbed buffer areas, or similarly named areas, as may be shown on the recorded subdivision plat(s) for the Community or identified as zoning conditions affecting the Community. Any buffer areas shall exist as undisturbed natural buffer areas of existing vegetation. Without the approval of the ARC, an Owner shall not disturb any undisturbed buffer areas in any way, including, without limitation, the construction of any improvements in the undisturbed buffer, landscaping, or cutting of trees, bushes or other vegetation. In addition, no improvements may be erected within any impervious setback area without the approval of the ARC. Furthermore, an Owner shall not maintain or trim the vegetation in any undisturbed buffer, stream buffer, or impervious setback areas. The Association is allowed to maintain and trim the vegetation in any undisturbed buffer, stream buffer, or impervious setback areas at the direction of the Board, but only in accordance with all applicable zoning and code requirements.

**Section 7.39. Lot Coverage and Improvement Setbacks.** The Community contains building set back lines (including, but not limited to, zoning setbacks) and is subject to a maximum lot coverage restriction as shown on the recorded subdivision plat(s) for the Community. Except as may be allowed under all applicable zoning and code requirements, Owners shall not construct any improvements encroaching on the building set back lines or in excess of the maximum lot coverage.

**Section 7.40. Use of Common Area.** There shall be no obstruction of the Common Area, nor shall anything be kept on, parked on, stored on, or removed from any part of the Common Area without the prior written consent of the Board, except as specifically provided in this Declaration. Unless permitted by the Board of Directors, there shall be no gardening or landscaping on the Common Area (except for those portions of the Common Area that may be specifically designated by the Board as a "Community garden") by Owners or Occupants without the prior written consent of the Board. This Section shall not apply to Declarant during the Development Period.

## **ARTICLE 8. COVENANTS TO ENCOURAGE SUSTAINABLE LIVING**

**Section 8.1. Solar Panels.** Notwithstanding any provision to the contrary contained in this Declaration, Owners shall be permitted to install solar panels on portions of the roof of the Residence on the Lot sloping towards the rear of the Lot, provided that solar panels are not visible from the front of the Lot.



**Section 8.2. Compost Piles.** Notwithstanding any provision to the contrary contained in this Declaration, Owners shall be permitted to keep a compost pile in the rear of the Owner's Lot without approval of the Architectural Review Committee provided that:

- (i) the compost is fully enclosed in an impervious container that is not accessible to animals or rodents; and
- (ii) the compost pile is not any closer than fifteen (15) feet to a rear property line of a Lot (no compost piles may be located within the sidelines of the Residence on the Lot).

**Section 8.3. Vegetable Gardens.** Notwithstanding any provisions to the contrary contained in this Declaration, Owners shall be permitted to have vegetable garden(s) in the rear of the Owner's Lot with prior approval of the Architectural Review Committee, provided that:

- (i) only vegetables, fruit or herbs are grown in the vegetable garden;
- (ii) all dead plants or portions thereof are immediately removed from the vegetable garden(s);
- (iii) the area of the vegetable garden(s) is covered with pine straw or mulch at any time the garden is dormant;
- (iv) the total square footage of the vegetable garden(s) does not exceed two hundred (200) square feet;
- (v) the entire rear yard of Owner's Lot is entirely enclosed with a privacy fence, as provided in Section 7.14 of this Declaration; and
- (vi) placement of the vegetable garden(s) is within only the rear yard of Owner's Lot.

The Board may also establish community vegetable garden(s) on the Common Area and develop separate Rules and Regulations relating to the use and maintenance of any such community vegetable garden(s).

**Section 8.4. Rain Barrels.** Notwithstanding any provision to the contrary contained in this Declaration, Owners shall be permitted to connect downspouts to plastic rain barrels without prior approval of the Architectural Review Committee provided that:

- (i) the water collected in the rain barrel is used for watering plants, irrigation, or other outdoor household purposes;
- (ii) the water is not permitted to stagnate where it has an odor;
- (iii) the rain barrel is enclosed so that it is not accessible to or a breeding ground for animals, rodents or insects; and
- (iv) the rain barrel is beige or brown in color or of a natural wood appearance.

**Section 8.5. Other Energy Devices.** Notwithstanding any provision to the contrary contained in this Declaration and except for devices installed by Declarant, Owners shall be permitted to install artificial or man-made devices which are designed or used for collection of energy by wind or geothermal energy or other similar purposes, provided that such devices are:



- (i) Installed on the rear of the Lot;
- (ii) Not visible from the front of the Lot;
- (iii) Not in violation of any governmental or regulatory regulation; and
- (iv) Approved by the Architectural Review Committee prior to installation.

## ARTICLE 9. MAINTENANCE

**Section 9.1. Association's Responsibility.** The Association shall maintain and keep in good repair, and when necessary, replace the Area of Common Responsibility, subject to any insurance then in effect. Specifically, but not by way of limitation, the Association shall maintain: (i) all landscaping, fencing, paving and other improvements located on the Common Area; (ii) all storm water retention, detention or ponds, and appurtenant structures located in the Community, if and to the extent such ponds and storm water drainage systems are not maintained by a public entity, governmental entity, or owners of neighboring property; (iii) all entrance features in the Community whether located on a Lot or on the Common Area; (iv) sidewalks whether located on a Lot or on the Common Area unless maintained by a governmental or public entity; (v) any streets, roads, and alleys located within the Community which are not maintained on an ongoing basis by a governmental or public entity; (vi) any reinforced engineered vertical slopes in the Community; (vii) all Community greenspace and Common Area; (viii) any recreational amenities serving the Community, including pedestrian trails, walking paths, benches, and parks within the Community, if any; (ix) all street lighting in the Community to the extent not maintained by a governmental entity; (x) any central mailbox area(s) and mailbox kiosk(s) within the Community; (xi) any irrigation systems within the Common Area; and, (xii) any Community fencing (as determined by the Board) which is located on Lots. The Association shall also maintain all property outside of Lots located within the Community which was originally maintained by Declarant or its affiliates.

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

Moreover, the Association shall also have the exclusive right and obligation to maintain (i) the front, side and rear lawns of all Lots following the initial installation of sod or other final grassing or landscaping of such Lot and residency by the Owner of such Lot, (ii) the pruning and trimming of all trees, hedges and shrubbery on a Lot, (iii) watering landscaped areas on a Lot, (iv) keeping lawn areas healthy, alive, attractive, and free of weeds and dead plant material, (v) keeping improvements and exterior lighting in good repair and working order, (vi) keeping driveways and walkways in good repair, (vii) all exterior maintenance, repair and replacement to the Residence located on the Lot, including, without limitation, periodic painting, caulking and pressure washing as needed, (viii) repairing exterior damage to improvements, and (ix) maintaining, repairing and replacing all storm water drainage facilities, including, all pipes, wires and conduits related thereto, located on and exclusively serving the Lot (collectively, "Association Maintenance"). Such Association Maintenance shall include only that scope of work as determined by the Board and shall be performed according to a schedule determined by the Board.

Notwithstanding the other provisions of this Article, the Association shall be responsible for mowing and maintenance of all grass enclosed within fences and/or courtyard areas within the Lots and for maintaining and keeping in good repair the fencing associated with any such fenced area and courtyards on the Lots. The Association may contract with a third party to perform this work, and said third party and its employees, personnel, agents and representatives, as well as Association agents and representatives, may be accessing the entire yard area at any time and without notice and may access areas that Owners and residents consider to be private. Utility companies and contractors may also be accessing yard areas to



read, inspect and maintain HVAC, electrical and other utility meters and units. To accommodate this maintenance, townhome yard gates, if any, should not be locked.

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

**Section 9.2. Owner's Responsibility.** Except as provided in Section 9.1 above and unless such maintenance responsibility is otherwise assumed or assigned to the Association pursuant to this Declaration, or any Supplemental Declaration, all maintenance of a Lot and the Residence, and other improvements located thereon shall be the sole responsibility of the Owner of such Lot, which Owner shall maintain such areas in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: (i) prompt removal of all litter, trash, refuse, and waste; (ii) complying with all governmental health and police requirements; (iii) maintaining grading and storm water drainage as originally established on the Lot; and (iv) maintaining, repairing and replacing all pipes, wires and conduits, including, without limitation, plumbing, electric and sanitary sewer systems, which exclusively serve the Lot. Except for landscaping installed by Declarant or the Association on a Lot, no landscaping shall be installed on a Lot except in accordance with this Declaration and until a landscape plan complying with the Design Guidelines has been submitted to and approved by the Architectural Review Committee.

In the event that the Board of Directors determines that such areas are not maintained in a manner consistent with the Community-Wide Standard and this Declaration, except in an emergency situation, the Board of Directors shall give the Owner written notice of the Association's intent to provide the necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall state the maintenance, repairs, or replacement deemed necessary. The Owner shall have thirty (30) days after receipt of the notice to complete the maintenance, repair, or replacement. In the event that the maintenance, repair, or replacement is not capable of completion within a thirty (30) day period, the Owner shall begin the work and shall complete it within a reasonable time. If the Board determines that (x) an emergency exists, or (y) that an Owner has not complied, the Association may provide the maintenance, repair, or replacement at that Owner's sole cost and expense, and all costs including reasonable attorneys' fees shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

**Section 9.3. 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 9. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations by the Board.

## **ARTICLE 10. INSURANCE AND CASUALTY LOSSES**

**Section 10.1. Association Insurance.** The Association, acting through its Board of Directors or its duly authorized agent, shall have the authority to and shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that the Association has assumed responsibility for maintenance, repair, and /or replacement thereof in the event of a casualty. If blanket "all-risk" coverage is not generally available at reasonable cost, then at a minimum an insurance policy providing fire and extended coverage, including coverage for vandalism and malicious mischief, shall be obtained. The face amount of such





insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured peril.

The Board also shall obtain a commercial general liability policy covering occurrences commonly insured against arising out of or in connection with the use, ownership, or maintenance of the Area of Common Responsibility. If generally available at reasonable cost, the commercial general liability policy shall have at least a One Million and 00/100 Dollar (\$1,000,000.00) combined single limit as respects bodily injury and property damage and at least a Two Million and 00/100 Dollar (\$2,000,000.00) limit per occurrence and in the aggregate. The liability insurance obtained by the Association pursuant to this Declaration shall cover the Association and the officers, agents and employees of the Association, the Owners, and their respective Mortgagees. The Association shall be designated as the named insured, individually and as agent for the Owners collectively, without naming them individually, and as agent for their respective Mortgagees.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners or Occupants, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their respective Lots pursuant to Section 5.5 hereof.

All insurance coverage obtained by the Board of Directors shall be governed by the following provisions:

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

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

(iii) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees.

(iv) All property insurance policies shall have an inflation guard endorsement, if reasonably available.

(v) If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement.

(vi) The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Gwinnett County, Georgia area.

(vii) The Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

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



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

(C) a statement that no policy may be cancelled, invalidated, suspended, or subjected to nonrenewal on account of any one or more individual Owners;

(D) a statement that no policy may be cancelled, invalidated, suspended, or subjected to nonrenewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of a reasonable time thereafter within which it may be cured by the Association, its manager, any Owner, or Mortgagee;

(E) a statement that any "other insurance" clause in any policy excludes individual Owners' policies from consideration; and

(F) a statement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to other insurance required by this Section 10.1, the Board shall obtain, as a Common Expense, worker's compensation insurance if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, and flood insurance, if advisable. Moreover, the Board may obtain a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined by the Board using its best business judgment.

**Section 10.2. Repair and Reconstruction.** In the event of damage to or destruction of all or any part of the improvements on the property maintained by the Association as a result of any event covered by the Association's insurance, unless seventy-five percent (75%) of the Total Association Vote decide within sixty (60) days after the loss not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure.

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

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

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

(b) Source and Allocation of Proceeds. If insurance proceeds are not sufficient to defray the estimated costs of reconstruction and repair of the property maintained by the Association, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction



and repair the funds for the payment of the costs thereof are insufficient, a Special Assessment in an amount necessary to cover the insufficiency may be made against all of the members. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be retained by the Association.

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

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

## **ARTICLE 11. CONDEMNATION**

In lieu of or under threat of condemnation by a governmental or other entity with the lawful power to condemn property, the Board of Directors shall have the power to convey portions of the Common Area to such governmental or other entity which has a lawful power to condemn real property in lieu of or under threat of condemnation. The award made for such taking shall be used by the Association as follows:

(i) If the taking involves a portion of the Common Area on which improvements have been constructed, then the Association shall restore or replace such improvements so taken on the remaining land included in the Area of Common Responsibility to the extent lands are available, unless within sixty (60) days after such taking Declarant (during the Development Period) and Owners representing at least seventy-five percent (75%) of the Total Association Vote shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the provisions in Article 10 hereof regarding the disbursement of funds for the repair of casualty damage or destruction shall apply.

(ii) If the taking does not involve any improvements on the Area of Common Responsibility, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors shall determine.

## **ARTICLE 12. MORTGAGEE PROVISIONS**

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

**Section 12.1. Notices of Action.** An Eligible Mortgage Holder, who provides a written request to the Association (such request to state the name and address of such Eligible Mortgage Holder and the Lot number) will be entitled to timely written notice of:



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

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

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

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

**Section 12.2. No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Association easement areas.

**Section 12.3. Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**Section 12.4. Amendments by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements, which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

**Section 12.5. Liability for Common Expenses.** Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title.

**Section 12.6. Applicability of This Article.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Community Instruments, or Georgia law for any of the acts set out in this Article.

**Section 12.7. Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## ARTICLE 13. EASEMENTS

**Section 13.1. Easements for Utilities.** There is reserved to Declarant and the Association blanket easements upon, across, above, and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining (i) all utilities serving the Community or any portion



of the Common Area, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, (ii) water runoff and storm drainage systems, and (iii) any other services such as, but not limited to, a master television antenna system, cable television system, or security system which may be installed to serve the Community. It shall be expressly permissible for Declarant, the Association, or the designee of either, to do or to authorize the installation, repairing, replacing, and maintaining of the wires, conduits, cables, and other equipment related to providing any such utility or service. Should a party furnishing any such utility or service request a specific license or easement by separate recordable document, Declarant or Board, as applicable, shall have the right to grant such easement.

In the event that any Owner desires access to the attic or other areas of another Residence to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owner of such other Residence(s) at least two (2) days in advance of the date that access is needed and attempt to agree on a convenient date and time for access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a Residence to which access is needed under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Residences, reasonable steps shall be taken to protect such Residences and the property of the Owners and Occupants thereof, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 13.2. Easement for Entry.** In addition to the right of the Board to exercise self-help as provided herein, the Board shall have the right, but not the obligation, to enter upon any property within the Community for emergency, security, and life-safety reasons. This right may also be exercised by the agents of the Association, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. The Board shall have the right to enter to cure any condition that may increase the possibility of a fire, slope erosion, or other hazard if an Owner or Occupant does not cure the condition after request by the Board and in such event, the Owner shall be obligated to reimburse the Association for the cost of curing such condition and the Association may charge such cost to the Lot, as a Specific Assessment in accordance with Section 5.5 herein. For purposes of this Section, a water or other utility leak, fire, strong foul odor, obvious insect infestation, or sounds indicating that a person or animal might be injured or sick and require immediate medical attention shall be considered emergencies justifying immediate entry onto any Lot. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a property shall exist.

**Section 13.3. Easement for Maintenance.** Declarant expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, including any and all Lots, determined in the sole discretion of the Association, as are necessary to allow for the maintenance, repair, and when necessary, replacement of the Area of Common Responsibility, as required under this Declaration. The Association and its agents shall endeavor to exercise the easement rights granted in this Section with minimum interference to the quiet enjoyment of a Lot.

**Section 13.4. Construction and Development Period Easement.** Notwithstanding any provision contained in the Community Instruments, during the Development Period, there is hereby reserved to Declarant an easement across the Community 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 the development, construction, sales and marketing activities by Declarant with respect to the Community, including, but without limitation, the following: (i) 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; (ii) the right to tie into any portion of the Community with driveways, parking areas and walkways; (iii) 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; (iv) the right to grant easements over, under, in or on the Community, including, without limitation, the Lots, 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; (v) the right to carry on sales, marketing and promotional activities in the Community; (vi) the right to erect and maintain signs; (vii) the right to construct and operate business offices, construction trailers, model residences, and sales offices; and, (viii) the right to use the parking facilities within the Community. In addition, Declarant may use Residences, offices, or other buildings owned or leased by Declarant as model homes 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 the express written consent of Declarant until the expiration of the Development Period.

**Section 13.5. Public in General.** The easements and rights created in this Article do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, that nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the Official Records or which may exist in favor of property owners adjoining the Community. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days' prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Community), all or any portion of the Community which, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

**Section 13.6. Easement for Entry Features and Street Signs.** There is hereby reserved to Declarant, and granted to the Association, and the designees 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 13.7. Trash Receptacle Easement.** Declarant hereby declares, creates, imposes and establishes a non-exclusive joint and reciprocal easement in perpetuity over and across an area five (5) feet wide running along and contiguous to the boundary line of any private streets or alleys in the Community as shown on the Survey for the placement of trash receptacles for pickup.

**Section 13.8. Easements for Drainage.** There is hereby reserved to Declarant and the Association an easement upon, across, above and under all storm water drainage easement areas as shown on the Survey for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining the storm water drainage system and related facilities serving the Community or any portion thereof (but without obligation on the part of Declarant). Areas of storm drainage piping and retention or detention ponds within the Community may be maintained by governmental entities and such governmental entities may have easements over, across and under such areas. This easement shall include the right (but not obligation on the part of Declarant) to construct and maintain catch basins, retention or detention ponds, drainage swales, storm sewers, storm drains, and appurtenant structures, sloping banks, cut or fill, except as otherwise handled by governmental entities. In addition, there is hereby reserved to Declarant and granted to the Association a blanket easement across all Lots for creating and maintaining satisfactory drainage in the Community (but without obligation on the part of Declarant); provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the Residence structure. It is anticipated that increased storm water run-off across downstream Lots will result from the construction of impervious surface in the Community. Declarant, the Association and any Owner constructing according to



plans and specifications approved or deemed approved under Article 6 hereof shall not have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from such construction.

**Section 13.9. Easement Over Streets, Roads, Alleys; Signs.** Declarant hereby grants, conveys, declares, creates, imposes, and establishes, a perpetual, nonexclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across any private streets or alleys located within the Community that are not otherwise maintained by a governmental entity, as depicted on the recorded subdivision plats for the Community and which serve more than one (1) Lot. The right-of-way easement herein granted shall permit joint usage of such easement by (i) the Owners and Occupants, (ii) the legal representatives, successors and assigns of the Owners, and (iii) invitees and licensees of the Owners and Occupants. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any such easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional nonexclusive easements to third parties, over, under and across the easement area. Declarant hereby reserves for itself and grants to the Association as Common Area, the perpetual nonexclusive right and easement upon, over and across any private streets or alleys in the Community for the installation, maintenance, and use of such drives, sidewalks, traffic directional signs, grading for proper drainage, and related activities and improvements. In addition, all Lots shall be subject to a perpetual easement in favor of the Association and all other Owners for maintenance, management, repair, landscaping, and non-exclusive ingress, egress, use and enjoyment, of any private streets or alleys which are located in the Community, as shown on the recorded plats for the Community, whether said alleys are located on Common Area or are located on Lots. This easement right includes rights of contractors and repair persons, including, but not limited to, their employees, personnel, agents and representatives, as well as Association agents and representatives, engaged by the Association to enter upon any and all Lots from time to time as necessary in order to perform any of the above repair or maintenance work. Owners of the Lots shall not impair access to, or otherwise alter in any way, said alleys or landscaping.

#### **ARTICLE 14. ANNEXATION AND WITHDRAWAL OF PROPERTY**

**Section 14.1. Withdrawal of Real Property from the Community.** During the Development Period, Declarant reserves the right to amend this Declaration to withdraw any portion of the Community then owned by Declarant or the Association from the coverage of this Declaration, to the extent that such real property was included originally in error or as a result of any changes in Declarant's development plans for the Community, provided that such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community.

**Section 14.2. Annexation of Real Property to the Community.** Upon the written consent of (i) the owner(s) thereof, (ii) Declarant, and (iii) the Owners of at least two-thirds (2/3) of the Lots, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Official Records a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Association's secretary. The annexation shall be effective only upon the filing for record of such Supplemental Declaration in the Official Records, unless a later Effective Date is provided therein.

**Section 14.3. Additional Covenants and Easements.** Declarant may unilaterally subject any portion of the Community submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through assessments. Such additional covenants and easements shall be set forth in a Supplemental



Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than Declarant.

## **ARTICLE 15. DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

**Section 15.1. General.** Declarant, Owners, Occupants, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (individually, a "Bound Party" and collectively, the "Bound Parties"), agree that it is in the best interest of all concerned to encourage a resolution of disputes involving the Community and this Declaration without the emotional and financial costs of litigation. Instead, the Bound Parties agree to the following dispute resolution procedures.

**Section 15.2. Claims.** The following actions shall not constitute a Claim and shall not be subject to the provisions of this Article:

- (i) suit by the Association against a Bound Party to enforce the provisions of Article 6 of this Declaration;
- (ii) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary to maintain the status quo and preserve the Association's ability to enforce the provisions of the Articles 7 and 9 of this Declaration;
- (iii) any suit between Owners that does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Instruments; and
- (iv) any suit in which any indispensable party is not a Bound Party.

**Section 15.3. Notice.** The Bound Party asserting a Claim against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (iii) the resolution or remedy proposed by the Bound Party asserting a Claim; and
- (iv) that the Bound Party asserting a Claim will meet with the Respondent to discuss in good faith ways to resolve the Claim.

**Section 15.4. Hearing.** Prior to filing any Claim against the Association, the Board, or any officer, director, or property manager of the Association, an Owner or Occupant must request and attend a hearing with the Board. Any such request shall be in writing and shall be personally delivered to any member of the Board or the property manager, if any, of the Association. The Owner or Occupant shall, in such request 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 or Occupant's grievance. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the Owner or Occupant requesting the hearing. The Board shall schedule this hearing for a





date not less than seven (7) or more than twenty one (21) days from the date of receipt of the request, except with approval of such Owner or Occupant.

**Section 15.5. Waiver of Jury Trial; Mediation and Arbitration.** If the Board is unable to resolve the dispute to the satisfaction of the Owner or Occupant at the hearing described in Section 15.4 above (the "Dispute"), then the Board may require that such Dispute be submitted to mediation before an agency or entity selected by the Board providing certified mediation services in Gwinnett County, Georgia or the metropolitan Atlanta area, and the Owner or Occupant agrees to participate in such mediation. Owner or Occupant further agrees that its participation in mediation is a condition precedent to such Owner or Occupant pursuing any other available remedy in relation to the Dispute. If the Board requires mediation, then the Board shall give written notice to the Owner or Occupant of the Board's desire to commence mediation, and a mediation session must take place within thirty (30) days after the date that such notice is given. The Board and Owner or Occupant further agree to share equally the costs of the mediation, which costs will not include costs incurred by a party for representation by counsel at the mediation. If the Board and Owner or Occupant are unable to reach a settlement after mediating for not less than two (2) eight (8) hour sessions then the parties agree to submit any unresolved disputes to binding arbitration in accordance with O.C.G.A. § 9-9-1, et seq., and the Commercial Arbitration Rules of the American Arbitration Association, as in effect on the Effective Date. The decision of the arbitrator shall be final and the arbitrator shall have authority to award attorneys' fees and allocate the costs of arbitration as part of any final award. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

**Section 15.6. Standing to Bring a Claim.** All Owners hereby acknowledge and agree that the Association shall not be entitled to bring a Claim against any Person that 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. Furthermore, all Owners hereby acknowledge and agree that no Owner shall be entitled to bring a Claim against any Person that is based on any alleged defect in the Common Areas, but rather, that all such Claims shall be instituted by the Association on behalf of the Owners.

**Section 15.7. Claims by an Owner.**

(a) General. Prior to filing any Claim relating to alleged physical damage or defects to a Lot, the Owner of such Lot, as the "Claimant" shall comply fully with the pre-action conditions set forth in the Right to Repair Act. In the event that Claimant fails to comply fully with the pre-action conditions set forth in the Right to Repair Act, Claimant shall be responsible for all reasonable attorneys' fees and expenses incurred by Declarant or its Contractors in obtaining a stay of the legal proceeding and/or responding to the Claim. Within the earlier of (i) thirty (30) days after Claimant's discovery of any alleged physical damage or defects to the Lot, or (ii) thirty (30) days after Claimant should have known of the alleged physical damage or defects to the Lot (referred to this Subsection as the "Claim Period"), Claimant shall provide written notice describing in detail the basis for such Claim and the repairs and/or alterations reasonably necessary to remedy the alleged defect or damage. Claimant's failure to provide prompt written notice to Declarant or its Contractors within the Claim Period shall constitute a waiver by Claimant of any potential obligation of Declarant or its Contractors to remedy the alleged physical damage or defects to the Lot and any Claim related thereto.

(b) Limitation Period. The exclusive period of limitation for an Owner to bring any Claim of any nature against Declarant or its Contractors, including, but not limited to, a Claim of construction defect or defective design of a Lot, shall be the earliest of: (i) for Claims alleging construction defect or defective design, one (1) year from the date that the Owner or Occupant discovered or reasonably should have discovered evidence of the Claim; provided, however, in no event shall the limitation period exceed two (2) years from the date Declarant conveyed the Lot to the original Owner unless the basis of the Claim was intentionally concealed or willfully concealed by Declarant or its Contractors, in which case, the state law governing the limitation period shall apply to the Claim; (ii) for Claims other than those



alleging construction defect or defective design, two (2) years after the date Declarant conveyed the Lot to the original Owner or such other shorter period specified in any written agreement between Declarant and the Owner to whom Declarant initially conveyed the Lot, unless the basis of the Claim was intentional fraud or willful misconduct, in which case, the applicable law governing the limitation period shall apply to the Claim; or (iii) the end of the statutory period provided under applicable law governing the limitation period.

**Section 15.8. Claims by the Association.**

(a) General. Prior to filing any Claim relating to alleged physical damage or defects to the Common Areas, the Association, as the "Claimant" shall comply fully with the pre-action conditions set forth in the Right to Repair Act. In the event that Claimant fails to comply fully with the pre-action conditions set forth in the Right to Repair Act, Claimant shall be responsible for all reasonable attorneys' fees and expenses incurred by Declarant or its Contractors in obtaining a stay of the legal proceeding and/or responding to the Claim. Within the earlier of (i) thirty (30) days after Claimant's discovery of any alleged physical damage or defects to the Common Areas, or (ii) thirty (30) days after Claimant should have known of the alleged physical damage or defects to the Common Areas (referred to this Subsection as the "Claim Period"), Claimant shall provide written notice describing in detail the basis for such Claim and the repairs and/or alterations reasonably necessary to remedy the alleged defect or damage. Claimant's failure to provide prompt written notice to Declarant or its Contractors within the Claim Period shall constitute a waiver by Claimant of any potential obligation of Declarant or its Contractors to remedy the alleged physical damage or defects to the Common Areas, and any Claim related thereto.

(b) Limitation Period. The exclusive period of limitation for the Association to bring any Claim of any nature against Declarant or its Contractors, including, but not limited to, a Claim of construction defect or defective design of the Common Areas, shall be the earliest of: (i) for Claims alleging construction defect or defective design, one (1) year from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim; provided, however, in no event shall the limitation period exceed two (2) years from the date Declarant or its Contractors substantially completed the Common Areas unless the basis of the Claim was intentionally concealed or willfully concealed by Declarant or its Contractors, in which case, the state law governing the limitation period shall apply to the Claim; (ii) for Claims other than those alleging construction defect or defective design of the Common Areas, two (2) years from the date Declarant or its Contractors substantially completed the Common Areas unless the basis of the Claim was intentional fraud or willful misconduct, in which case, the applicable law governing the limitation period shall apply to the Claim; or (iii) the end of the statutory period provided under applicable law governing the limitation.

**Section 15.9. Consensus for Association Litigation.** Except as provided in this Article 15, no judicial or administrative proceeding shall be commenced or prosecuted by the Association, nor shall the Association participate in any land use or zoning proceedings (unless reasonably necessary to accommodate an Exterior Structure or Improvement on the Community or to comply with applicable zoning ordinance and use restrictions), unless approved by a vote of the Owners as hereinafter provided. The Board shall prepare a budget of the total estimated cost of the litigation or proceeding which shall be submitted to the Owners for a vote along with the estimate of the total cost of the litigation or proceeding made by the attorney being retained by the Association for the litigation or proceeding. The Association shall assess all Owners by Special Assessment for the total estimated costs and fees of the proposed litigation or proceeding and no funds from regular periodic assessments or capital contributions may be used for such purpose. The proposed litigation or proceeding, the budget, and the Special Assessment for litigation, must all be approved by a vote of the Owners representing at least seventy-five percent (75%) of the Total Association Vote; provided, however, votes appurtenant to any Lot or Lots then owned by Declarant shall be excluded if the proposed litigation or proceeding relates to a claim against Declarant. This Section 15.9 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 15.9 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.

## ARTICLE 16. GENERAL PROVISIONS

**Section 16.1. Duration.** The covenants and restrictions 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 at least sixty-six and two-thirds percent (66 2/3%) of the record Owners execute an agreement to prevent renewal of the covenants and such agreement is recorded and an attorney's affidavit confirming ownership of the Lots or such other requirement as provided in O.C.G.A. §44-5-60. A written instrument reflecting termination must be recorded within two (2) years prior to the expiration of the initial twenty (20) year period or any subsequent twenty (20) year period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Section 16.1.

**Section 16.2. Termination of Rights of Declarant.** The rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (i) the expiration of the Development Period; or (ii) the date of recording by Declarant in the Official Records of a written instrument terminating all of Declarant's rights hereunder.

### Section 16.3. Amendment.

(a) Unilateral Amendment. This Declaration or the Bylaws may be amended unilaterally at any time and from time to time by Declarant: (i) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict; (ii) if an amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the property subject to this Declaration; (iii) if an amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable the lender or purchaser to make or purchase Mortgage loans on the property subject to this Declaration; or (iv) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the property subject to this Declaration. However, any such amendment shall not adversely affect the title to any Owner's Lot unless the Owner consents to the amendment in writing. Furthermore, during the Development Period, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, such amendment shall neither materially and adversely affect the substantive rights of any Owner, nor adversely affect title to any Lot without the consent of the affected Owner.

(b) Amendment by Vote and/or Written Consent. In addition to the above, this Declaration or the Bylaws 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. Amendments to this Declaration or the Bylaws shall become effective upon recordation, unless a later Effective Date is specified in the amendment. During the Development Period, no provision of this



Declaration or the Bylaws which reserves, grants, or exempts special rights, easements, or exemptions to Declarant shall be amended or removed without the prior written consent of Declarant.

(c) Action to Challenge. Any action to challenge the validity of an amendment adopted under this Section 16.3 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 16.4. SECURITY.** THE ASSOCIATION OR DECLARANT MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE LIFE-SAFETY IN THE COMMUNITY. HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES ACKNOWLEDGES AND AGREES THAT NEITHER THE ASSOCIATION NOR DECLARANT IS A PROVIDER OF SECURITY AND NEITHER PARTY SHALL HAVE A DUTY TO PROVIDE SECURITY FOR THE COMMUNITY. FURTHERMORE, NEITHER DECLARANT NOR THE ASSOCIATION REPRESENTS THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE COMMUNITY AND COMMIT CRIMINAL ACTS NOR DOES DECLARANT OR THE ASSOCIATION REPRESENT THAT CRIMINAL ACTS WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY, AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH OWNER. DECLARANT AND THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

**Section 16.5. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 16.6. 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 16.7. 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 16.8. 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 16.9. Notices.** Except as otherwise specifically provided in such document(s), as the case may be, notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner (at the address of the Lot), to Declarant (at the address of its registered agent on file with the Secretary of State of Georgia), and to the Association (at the address of its registered agent on file with the Secretary of State of Georgia). Any Owner may designate a different address, including an electronic mail address, for notices to such Owner by giving written notice to the Association. Owners shall keep the Association advised of their current address and phone number(s) where they can be reached. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage prepaid, or delivered in person, including delivery by Federal Express or other reputable commercial courier service, or issued electronically in accordance with Chapter 12 of Title 10 of the Official



Code of Georgia Annotated, the "Uniform Electronic Transactions Act." The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

**Section 16.10. Notice of Sale or Acquisition.** Owners must keep the Association apprised of their name, address and telephone number. Accordingly, prior to the sale of a Lot, the Owner shall provide the Association with written notice of the name of the purchaser and such other information as the Board may reasonable require. Upon acquisition of a Lot, each new Owner shall provide the Association with written notice of the name, mailing address and telephone number of the Owner, the names of the Occupants of the Lot, if any, and such other information as the Board may reasonably require. All Owners shall notify the Association of any change in name, address, or telephone number.

**Section 16.11. Indemnification.** To the fullest extent allowed by the Georgia Nonprofit Corporation Code, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorneys' fees, imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

**Section 16.12. 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 Official Records.

**Section 16.13. Sale of Lots.** An Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give written notice to the Board of Directors of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish to the Board as part of the notice (i) the name and address of the intended grantee; and (ii) such other information as the Board may reasonably require. This Section 16.13 shall not be construed to create a right of first refusal in the Association or in any third party.

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

**Section 16.14. Agreements.** Subject to the prior approval of Declarant (during the Development Period), 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 16.15.No Discrimination.** No action shall be taken by Declarant, the Association or the Board of Directors which would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or disability.

**Section 16.16.Cumulative Effect; Conflict.** The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any declaration affiliated with the Community and the corresponding association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions, and the provisions of any articles of incorporation, bylaws, Rules and Regulations, policies, or practices adopted or carried out pursuant thereto, those of any declaration or association affiliated with the Community shall be subject and subordinate to those of this Declaration and the Association. In the event of a conflict between the provisions of this Declaration and the provisions of Georgia law, then to the extent that the provisions of Georgia law cannot be waived by agreement, Georgia law shall control.

**Section 16.17.Implied Rights.** The Association may exercise any right or privilege given to it expressly by the Community Instruments, 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 16.18.Variances.** Notwithstanding anything to the contrary contained in this Declaration, Declarant (for so long as it owns any portion of the Community) and the Board of Directors or its designee shall be authorized, but not required, in its sole discretion to grant individual variances from any of the provisions of the Community Instruments, if it determines that waiver of application or enforcement of the provision in a particular case would not materially harm other Owners or negatively affect other Owners' quality of life in the Community.

**Section 16.19.Successor Declarants.** Any successor to Declarant shall not be responsible or subject to liability by operation of law or through the purchase of Declarant's interest in the Community or any portion thereof at foreclosure or otherwise for any act, omission, or matter occurring or arising from any act, omission, or matter occurring prior to the time the successor succeeded to the interest of Declarant.

**Section 16.20.Constructive Notice and Acceptance.** Every Person who or which shall hereafter have, claim, own or acquire any right, title, interest or estate in or to any portion of the Community, whether or not such interest is reflected in the Official Records, shall be conclusively deemed to have (i) consented and agreed to each and every term, provisions, covenant, condition, restriction, easement and reservation contained or by reference incorporated in this Declaration, whether or not any reference to this Declaration is contained in the document or instrument pursuant to which such Person shall have acquired such right, title, interest or estate on the Community or any portion hereof; and (ii) acknowledged and agreed that in addition to being subject to and bound by the Community Instruments, the Community is subject to and bound by other documents and instruments recorded in the Official Records.

**Section 16.21.Disclosures.** Each Owner and Occupant acknowledges the following:

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

(b) Adjacent Properties. Declarant makes no representations or warranties regarding the future development or use of properties adjacent to or in the vicinity of the Community (collectively "Adjacent Properties"), which may not necessarily be restricted exclusively to residential use, but shall be



subject only to uses allowed by applicable zoning ordinances, including, without limitation, office, retail or other commercial uses. Any floor plans, renderings, models, drawings, and the like, which purport to depict such Adjacent Properties, or any portion thereof, are merely projections, which are subject to change and do not reflect an actual commitment to develop the Adjacent Properties in any particular manner. No Owner and Occupant shall rely or any projected plans for the future development of the Adjacent Properties as an inducement to acquire or occupy a Lot.

The Community is adjacent to railroad tracks with active train traffic. Train traffic can generate noises, including horns, and vibrations, and dust. Any information or questions regarding the railroad and its related operations should be directed to the railroad owner and/or operator(s) and Declarant makes no representations regarding the railroad and its related operations. Further, all or portions of the Community are or may be encumbered by the following:

- i. Notice of Order and Judgment Affecting Interest in Real Estate in favor of Class Corridor, LLC, recorded in Deed Book 42675, Page 210, et seq., aforesaid records; and,
- ii. Deed of Assignment of Non-Cable Side Settlement Corridor Easements to Thoroughbred Technology and Telecommunications, LLC, recorded in Deed Book 53141, Page 193, et seq., aforesaid records.

(c) Off-Site Conditions. 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 Declarant shall not constitute a breach of fiduciary duty by the directors and officers of the Association that are appointed by Declarant, pursuant to the Bylaws.

(d) Crime. Crime exists in every neighborhood and Declarant and the Association and their respective affiliates make no representations regarding crime or security. Declarant and the Association are not providers of security and that if an Owner is concerned about crime or security, Owner should consult a security expert. Owners should be alert to and guard against the potential for crime. Crime statistics are maintained by the police in the jurisdiction in which the Community is located. It shall be Owner's sole responsibility to keep abreast of trends in criminal activity and to act accordingly.

(e) Easements. The Community is subject to all conditions, restrictions and easements of record and those set forth on the Survey, including, but not limited to, all drainage and sanitary sewer easements shown thereon, and the following:

- i. Easement Agreement from 125 Kelly Street Properties, LLC to Atlanta Gas Light Company, recorded in Deed Book 55649, Page 88, et seq., aforesaid records;
- ii. Easement contained in Judgment of Court, Gwinnett County vs. .6680 acres, et al., recorded in Deed Book 1124, Page 224, et seq., aforesaid records;
- iii. Easement from Simpson Engineering Company to Gwinnett County Water and Sewerage Authority, recorded in Deed Book 36419, Page 209, et seq., aforesaid records;
- iv. Easement from Simpson Engineering Company to City of Norcross, recorded in Deed Book 1470, Page 16, et seq., aforesaid records;
- v. Easement from 125 Kelly Street Properties, LLC to BellSouth Telecommunications, LLC d/b/a AT&T, recorded in Deed Book 56237, Page 658, et seq., aforesaid records; and,



vi. Temporary Construction and Maintenance Agreement between LVC Properties LLC and 125 Kelly Street Properties LLC recorded in Deed Book 56349, Page 75, et seq., aforesaid records.

The Community is also encumbered by that certain Access Easement Agreement between Paces Ferry Builders, LLC and SM, recorded in Deed Book 56349, Page 83, et seq., aforesaid records ("Access Easement"). The area described in the Access Easement is for pedestrian use only and persons who are not Owners, Occupants or guests of the Community may access such area and enter into the Community.

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

(g) Light and Views. The natural light available to and views from an Owner's Lot may change over time due to, among other circumstances, additional development and the growth or removal or addition of landscaping within the Community and in the surrounding neighborhood. Light may emit from structures located on Adjacent Properties.

(h) Zoning. No representations are made regarding the zoning of Adjacent Properties, or that the category to which Adjacent Properties is zoned may not change in the future.

(i) Schools. No representations are made regarding the schools that currently or may in the future serve the Lot.

(j) Construction Activities. Declarant may be constructing portions of the Community and engaging in other construction activities related to the construction of Common Area and additional phases of the Community. Such construction activities may, from time to time, produce certain conditions on the Community, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic, or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; (vii) temporary interruption of utilities; and/or (viii) other conditions that may threaten the life-safety of Persons on the Community. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions on the Community resulting from renovation and construction activities shall not be deemed a nuisance and shall not cause Declarant and its respective agents to be deemed in violation of any provision of this Declaration.

(k) Construction Changes. Building code requirements may change during the construction of the Community and may not necessarily be incorporated into the design or construction of the Community. During construction, there may be changes and alterations made to the original stamped and approved design drawings and the construction of the Community as a matter of necessity to achieve cost savings and due to field changes ordered by the architect, engineer, seller and various building inspectors.

(l) Community Scope. During the course of the construction of a Residence on a Lot or construction on any Common Area, variations from the original plans and specifications, some of which add scope, some of which reduce scope, and some of which alter scope, are inevitable and can, do, and may occur as a matter of intention and/or as a matter of necessity. Therefore, some code requirements may change during the interim period which may not be incorporated into the design of the Community.

(m) Humidity and Condensation. A Residence may trap humidity created by everyday 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 the 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. Blocking or covering any of the heating ventilation or air-conditioning ducts located in a Residence may cause condensation and humidity and is contraindicated. It is the responsibility of each Owner to keep Owner's Residence dry and well ventilated, and Declarant shall not be responsible for issues related to condensation and humidity affecting a Residence. Humidity and condensation are normal conditions and shall not constitute a construction or design defect.

(n) Heating and Cooling Systems. The performance and methods and practices of operating heating and cooling systems can be directly affected by the orientation and location of a room in relation to the sun. Declarant shall, therefore, have no obligation other than to install a heating and cooling system for a Residence that has been sized and designed based on industry standards for the type and size of the Residence to be constructed and which functions in accordance with industry standards. Moreover, no representations are made that the systems serving a Residence including, by way of example only, heating and air conditioning and electrical systems, will operate or perform at a level or standard greater than the minimum specifications of the manufacturer.

(o) Asbestos. Asbestos can found as accessory minerals in mineral deposits and occurs in its natural state in some rock formations. Declarant or the Association shall not conduct tests to determine the presence or absence of any type of naturally occurring asbestos in the soil of the Community. Declarant and the Association make no representations or warranties concerning the presence or absence of said minerals.

(p) Gases. The grading of the soil and other elements created by nature, as well as building materials developed by humans, many times create unwanted and undesired gases and other contaminants in homes and residential buildings, both new and used. Also, since energy conservation has become a concern, there is a need to build homes and residential buildings that are more airtight. As a result, these homes and residential buildings trap unwanted gases in different degrees depending on how each person lives within their home or such residential building. To date measurements of such unwanted gases (such as the radon gas described below and carbon dioxide) are reported as parts of the air they occupy. Since the quality of air a person breathes can affect health, Declarant recommends frequent airing of a Residence to introduce fresh air uncontaminated with such gases.

(q) Radon. The United States Environmental Protection Agency ("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 or Occupants seeking information about radon can contact the EPA or a state environmental office. Declarant and the Association do not have any expertise in the measurement or reduction of radon in homes or residential buildings or regarding acceptable levels or possible health hazards associated with radon. Moreover, Declarant and the Association make 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. Notwithstanding anything to the contrary stated in this Declaration, in the event that the presence of radon is found, there shall be no obligation of any party to remediate such condition.

(r) Carbon Monoxide. Carbon monoxide is a dangerous gas that typically cannot be smelled or seen. It is produced as a common by-product of the combustion (burning) of fossil fuels. Most fuel burning equipment (natural gas, gasoline, propane, fuel oil, and wood), if properly installed and maintained, produces little carbon monoxide. The by-products of combustion are usually vented to the outside. However, if there is a shortage of oxygen to the burner, or the venting is not adequate, carbon monoxide production can increase to dangerous levels. Common sources of carbon monoxide include gasoline engines running in closed garages, fuel-burning space heaters or water heaters with improper venting, and blocked chimneys or vent pipes. Each Owner should have a qualified professional routinely



maintain and inspect all heating systems and any fuel-burning appliances serving the Owner's Residence annually to ensure they are in good working condition. Each Owner should have a qualified professional routinely inspect appliance vents in the Residence annually for blockages, corrosion, cracks or leakage. Each Owner should consider installing and maintaining a carbon monoxide detector and alarm that measures the amount of carbon monoxide in the air and sounds an alarm at certain levels. The detector should be considered as a backup and not as a replacement for proper use and maintenance of fuel-burning appliances.

(s) Utility Infrastructure. Declarant makes no representation as to the location of mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins.

(t) Plans. Any floor plans, advertising materials, brochures, renderings, drawings, and the like, which purport to depict the homes to be constructed on Lots in the Community or any portion thereof, are merely approximations and do not necessarily reflect the actual as-built conditions of the same. Due to the unique nature of the construction process and site conditions, room dimensions, size and elevations may vary from home to home within the Community.

(u) Encroachments. Improvements may have been constructed on Adjacent Properties that encroach onto the Community.

(v) Trees. Trees, plants, shrubbery, rocks and landscaping existing within the Community may be adversely affected or removed during development construction activities and homebuilding activities within the Community.

(w) Erosion. There may be drainage systems for surface water runoff within the Community and portions of the Community may be subject to erosion and/or flooding during certain types of weather conditions.

(x) Sound and Vibrations. Residences in the Community will not be soundproof, free of vibrations, and sound and vibrations may be transmitted from one Lot to another, from the Common Area to a Lot and from outside of the Community to a Lot. By way of example only, sound and vibrations may be felt from such things as sirens, whistles, horns, the playing of music, equipment being operated, construction activity, building and grounds maintenance being performed, ambulances, airplanes, trains and other generators of sound and vibrations typically found in and around a neighborhood.

(y) Odors. There may be odors which affect the Community.

(z) Water. Water may pond on various portions of the Community having impervious surfaces.

(aa) Art. Any artwork displayed in the Common Area, model homes, construction offices and sales offices within the Community may be the property of Declarant, and not the Association. Such artwork may be the property of third party(ies) and such third party(ies) shall retain the right to remove or alter such artwork at any time. Artwork may also belong to other third parties, such as artists and galleries, who have permitted the artwork to be displayed temporarily on the Common Area, model homes, construction offices and sales offices.

(bb) Media Equipment. Electronic media equipment located in the Common Area (including, but not limited to televisions) may be the property of third party(ies) and such third party(ies) shall retain the right to remove or alter such equipment at any time.

(cc) Images and Photography. At various times, Declarant and the Association may use exterior images, pictures and photography of the Community, including Residences, for publication, advertising, sales and marketing purposes. Photography and film activities (including bright lighting)



related to sales and marketing of the Community may occur at various times of the day within the Community during the Development Period.

(dd) Marketing. From time to time, there may be marketing collateral throughout the Community, including, but not limited to, signs, flags, banners, media advertising, etc.

(ee) Community and Street Names. The name of the Community and street names within the Community may change. Declarant shall have no duty to contest any claim asserting that the name should be changed, and furthermore shall have no liability should the Community be forced to change its name.

(ff) Conditions Shown on Survey. The Community and the Lots contained therein are subject to those conditions shown on the Survey, including, but not limited to various buffers, easements, and other conditions that affect the Community and the Lots contained therein.

(gg) Association Budget. The Association budget is based on estimated expenses only and such expenses may increase or decrease from time to time.

(hh) Concrete Surfaces. Concrete surfaces are subject to cracking due to (i) water penetration, (ii) expansion and contraction of the concrete with temperature changes, (iii) building settlement, and (iv) other factors. Declarant shall not be liable for cracking in concrete surfaces.

(ii) Construction Materials. Various substances used in the construction of the improvements in the Community may now or in the future be determined to be toxic, hazardous or undesirable and may need to be specifically treated, handled and/or removed from the Community. The construction materials used may contain some of the following chemicals and minerals in measurable amounts: water (which may allow the growth of mold, mildew and fungus); formaldehyde (used in the manufacture of carpeting, insulation and pressed wood products); arsenic (used in treating wood products); methylene chloride (used in paint thinners); fiberglass; and petroleum products. Declarant has no expertise with respect to toxic wastes, hazardous substances, pet dander, dust mites, or other undesirable substances. Such substances can be extremely costly to correct and remove and Declarant shall have no liability to the Association, any Owner or any Occupant regarding the presence of such substances in the Community. All buildings contain products that have water, powders, solids and industrial chemicals, which will be used in construction. The water, powders, solids and industrial chemicals will and do contain mold, mildew, fungus, spores and chemicals that may cause allergic or other bodily reactions in certain individuals. Leaks, wet flooring and moisture will contribute to the growth of molds, mildew, fungus or spores. Declarant is not responsible for any illness or allergic reactions that an Owner or Occupant may experience as a result of mold, mildew, fungus or spores. It is the responsibility of each Owner to keep Owner's Residence clean, dry, well ventilated and free of contamination.

(jj) Water Intrusion. Although each Residence is constructed in accordance with customary industry practices, there is a probability that water intrusion will occur from a variety of sources that are not the responsibility of Declarant. Exterior inspections of the Community and the improvements constructed thereon are needed on a regular basis to mitigate against water intrusion and other potential causes for damage to the improvements constructed on the Community. As a Residence settles or is exposed to the elements, exterior caulking and flashings can dry and/or pull away from their original locations, creating openings through which water can penetrate. Regular inspections performed in accordance with a maintenance program can help identify areas on the Community where maintenance work should be performed. Caulks, sealants, flashings, and water-proofing materials tend not to have the useful life specified by the manufacturer of these materials and may need to be replaced with greater frequency than what has been specified. Regular maintenance of the improvements constructed on the Community is a proactive response to the settling and weathering of a Residence over time and not reflective of a construction or design defect.



(kk) Wood. The Buildings are wood frame construction. As wood dries, it can shrink and/or warp resulting in building settlement and cracks and tears in sheetrock and sheetrock tape. Such conditions are normal and shall not constitute a construction or design defect. In addition, natural wood has considerable variation due to its organic nature. There may be shades of white, red, black or even green in areas. In addition, mineral streaks may also be visible. Grain pattern or texture will vary from consistent to completely irregular; wood from different areas of the same tree can also have variations in pattern or texture. It is these variations in wood that add to its aesthetic appeal. These variations in grain will in turn accept stain in varying amounts, which will show throughout the wood products from one door to the next, one panel to the next or one piece of wood to the next. Also, cabinet finishes (including gloss and/or matte finishes) will not be entirely consistent and some minor irregularities will be apparent. Additionally, wood and wood products may be subject to warping, splitting, shrinking, swelling and/or delamination, all of which are normal conditions that shall not constitute a construction or design defect.

(ll) Stone. Veins and colors of any marble, slate or other stone in a Residence, if any, may vary drastically from one piece of stone to another. Each piece is different. Marble, granite, slate and other stone can also have chips and shattering veins, which look like scratches. The thickness of the joints between marble, granite, slate and other stone and/or other materials against which they have been laid will vary and there will be irregularities in surface smoothness. Marble, granite, slate, and other stone finishes may be dangerously slippery. Declarant assumes no responsibility for injuries sustained as a result of exposure to or use of such materials. Periodic use of professionally approved and applied sealant is needed to ensure proper maintenance of the marble, slate and other stone and it is the Owner's responsibility to properly maintain these materials in Owner's Residence. Marble, granite, slate, and other stone surfaces may scratch, chip or stain easily. Such substances may flex or move slightly in order to absorb impacts. Such movement may in turn cause grout to crack or loosen or cause some cracking in the stone flooring which may need to be repaired as part of normal home maintenance.

(mm) Paint. Due to the large quantity of paint used in the project, slight variations in paint shade or sheen may exist from Residence to Residence. Due to the properties within today's paints, paint may yellow somewhat with time. This is a normal occurrence and is therefore not covered as a warranty issue. Avoid washing or scrubbing painted walls. Lightly soiled areas may be cleaned using a sponge with water and lightly wiping over the soiled areas.

(nn) Fixtures. Certain materials used for fixtures in a Residence (including, but not limited to, brass/chrome plumbing fixtures, brass/chrome bathroom accessories and brass/chrome light fixtures) are subject to discoloration and/or corrosion over time.

(oo) Flooring Surfaces. Carpets, hardwood floors, and other flooring surfaces are subject to fading and wear over time. In addition, hardwood flooring in a Residence can be damaged or scratched as a result of normal wear and tear including, but not limited to, moving furniture, wearing footwear in a Residence (particularly high-heeled shoes), and dropping items on the floor. In addition, spaces may appear between boards in hardwood floors due to expansion and contraction of the flooring material. Such damage and scratches are normal attributes and an expected consequence of having hardwood flooring, and such damage and scratches shall not constitute a construction or design defect.

(pp) Insulation Thickness. Insulation thickness may vary depending upon local conditions and construction factors, including, but not limited to, such items as wall openings and plumbing of other structures or obstructions within the walls that displace the insulation. Declarant makes no representation or warranty regarding the same and Declarant is not responsible for any errors or omissions made thereby.

(qq) Availability of Guest Parking. Declarant makes no representations or warranties regarding the availability of guest parking on the Community.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the undersigned, Declarant herein, hereby executes this instrument by and through its duly authorized officers and under seal this 18 day of December, 2019.

**DECLARANT:**

**STANLEY MARTIN COMPANIES, LLC**  
a Maryland limited liability company

By: [Signature] [SEAL]  
Name: SCOTT DOZIER  
Its: DIVISION President

Signed, sealed and delivered this 18 day of December, 2019 in the presence of:

[Signature]  
Unofficial Witness

[Signature]  
Notary Public

My Commission Expires: 1-25-2020

[AFFIX NOTARIAL SEAL]

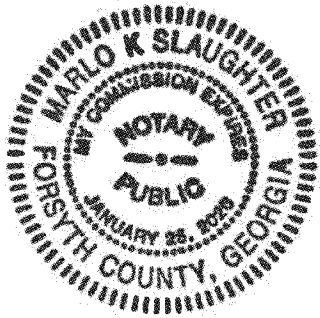


EXHIBIT "A"

LEGAL DESCRIPTION OF THE COMMUNITY

**All that tract or parcel of land lying and being in Land Lot 244, 6th District, City of Norcross, Gwinnett County, Georgia, and being more particularly described as follows:**

**BEGINNING at an iron pin set on the northerly right of way of Southern Railroad (200 foot right of way), said iron pin being S 60°19'42" W a distance of 149.91 feet from an iron pin set at the intersection of the northerly right of way of Southern Railroad and the westerly right of way of Kelly Street (40 foot right of way); thence along said northerly right of way of Southern Railroad S 60°19'42" W a distance of 535.48 feet to an iron pin set; thence leaving said right of way N 31°37'02" W a distance of 348.29 feet to an iron pin set; thence N 58°32'12" E a distance of 190.87 feet to an iron pin set; thence N 32°08'14" W a distance of 187.95 feet to an iron pin set on the southerly right of way of West Peachtree Street (right of way varies); thence along said right of way N 58°20'41" E a distance of 56.60 feet to a point; thence continue along said right of way N 58°25'46" E a distance of 65.00 feet to an iron pin set; thence leaving said right of way S 33°16'08" E a distance of 188.61 feet to an iron pin set; thence N 58°37'22" E a distance of 218.80 feet to an iron pin set; thence S 31°38'43" E a distance of 364.44 feet to the POINT OF BEGINNING. Said tract contains 213,977 square feet or 4.912 acres.**

Together with any additional property shown on the following plat not otherwise described above:

All that tract or parcel of land lying and being in Land Lot 244 of the 6<sup>th</sup> District, City of Norcross, Gwinnett County, Georgia, being approximately 4.902 acres as more particularly described on that certain Final Plat of The Kelly in Historic Norcross, recorded on December 21, 2018 at Plat Book 143, Page 282, et seq., Gwinnett County, Georgia records, said plat being incorporated herein by this reference and made a part hereof.

Together with:

Easement rights contained in that certain Storm Easement Agreement from Blue Sea, LLC to 125 Kelly Street Properties LLC, recorded in Deed Book 56128, Page 900, et seq., aforesaid records; and,

Easement rights contained in that certain Water Easement Agreement from Paces Ferry Builders LLC to 125 Kelly Street Properties LLC, recorded in Deed Book 56128, Page 904, et seq., aforesaid records.



EXHIBIT "B"

BYLAWS  
OF  
THE KELLY AT NORCROSS NEIGHBORHOOD ASSOCIATION, INC.

*These Bylaws may be used only in connection with the property at The Kelly at Norcross and the operation of The Kelly at Norcross Neighborhood Association, Inc.*



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**BYLAWS**

**OF**

**THE KELLY AT NORCROSS NEIGHBORHOOD ASSOCIATION, INC.**

**ARTICLE 1. GENERAL**

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**Section 1.1. Applicability.** These Bylaws provide for the self-government of The Kelly at Norcross Neighborhood Association, Inc., in accordance with the Articles of Incorporation filed with the Georgia Secretary of State ("Articles of Incorporation") and the Declaration of Covenants, Conditions, Restrictions and Easements for The Kelly at Norcross recorded in the Gwinnett County, Georgia land records ("Declaration").

**Section 1.2. Name.** The name of the corporation is The Kelly at Norcross Neighborhood Association, Inc. ("Association").

**Section 1.3. Definitions.** The terms used herein shall have their generally accepted meanings or such meanings as are specified in Article 1 of the Declaration.

**Section 1.4. 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 member's spouse or Domestic Partner 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) equal 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 1.5. 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, representative, or other designated agent of such entity shall be eligible to represent such entity in the affairs of the Association, including, without limitation, serving on the Board of Directors of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity which is 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 1.6. Voting.** Each Lot shall be entitled to one (1) equal vote, which vote may be cast by the Owner, the Owner's spouse or Domestic Partner, 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 themselves, 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, or to act as a proxy for any other member if that Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association 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 purposes of establishing a majority or a quorum.

**Section 1.7. 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" means 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 1.8. 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 Area of Common Responsibility 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 Carolina 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 1.9. 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.

(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 or Electronic Document. Pending verification, the Board may refuse to accept any Electronic Signature or Electronic Document 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 that the Board reasonably believes to be authentic. Any member or Person who negligently, recklessly or intentionally submits any falsified Electronic Document or an unauthorized Electronic Signature shall fully indemnify the Association for actual damages, reasonable attorneys' fees and expenses incurred as a result of such acts.

**ARTICLE 2. MEETINGS OF MEMBERS**

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**Section 2.1. Annual Meetings.** The regular annual meeting of the members shall be held 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 federal holiday.

**Section 2.2. 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 fifteen percent (15%) 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 2.3. Notice of Meetings.** It shall be the duty of the Secretary to mail or deliver to the record Owner of each Lot 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 seven (7) 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 2.4. 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 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 2.5. Quorum.** Except as may be provided elsewhere, the presence of Owners, in person or by proxy, entitled to cast twenty-five percent (25%) 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 2.6. 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 2.7. 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, dated, and filed with the Secretary or the Secretary's designated representative prior to the opening of the meeting for which it is to be used. Proxies may be filed with the Secretary or the Secretary's designated representative by personal delivery, U.S. mail or electronically. 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 2.8. 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.

The Board may deliver ballots and consent forms by personal delivery, U.S. Mail, facsimile transmission, e-mail, or other electronic means. Owners shall deliver their vote by ballot or consent form by whatever means is specified by the Board.

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 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 2.9. Order of Business.** The President shall establish the agenda for, and preside at, and the Secretary shall keep the minutes of, all membership meetings. The Board of Directors may establish rules of conduct and the order of business for all membership meetings. When not in conflict with the Declaration, these Bylaws, the Articles of Incorporation or meeting procedures adopted by the Board of Directors, Robert's Rule of Order (latest edition) shall govern all membership meetings. The Board may order the removal of anyone attending a membership meeting who, in the opinion of the Board disrupts the conduct of business at such meeting.

### **ARTICLE 3. BOARD OF DIRECTORS**

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**Section 3.1. Composition and Eligibility.** The affairs of the Association shall be governed by a Board of Directors. Except for directors appointed by Declarant hereunder, the directors shall be Owners or spouses or Domestic Partners of such Owners; provided, however, no Owner and his or her spouse or Domestic Partner may serve on the Board at the same time, and no co-owners may serve on the Board at the same time. 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 thirty (30) days delinquent in the payment of any assessment or charge by the Association.

**Section 3.2. Directors Appointed by Declarant.** Notwithstanding anything to the contrary herein, Declarant shall have exclusive authority to appoint and remove directors and officers until the earlier of the following events: (a) forty-five (45) days after the date as of which one hundred percent (100%) of the Lots or Townhomes shall have been conveyed by Declarant to Owners other than a Person constituting Declarant, or (b) the surrender in writing by Declarant of the authority to appoint and remove officers and directors of the Association (the "Declarant Control Period").

**Section 3.3. Number of Directors and Term of Office.** During the Declarant Control Period, the Board shall consist of at least one (1) but not more than five (5) directors, the exact number of which shall be determined by Declarant from time to time. 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, if three (3) directors are elected, the two (2) directors receiving the highest number of votes shall be elected for terms of two (2) years each and the remaining 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 3.4. Removal of Members of the Board of Directors.** After expiration of the Declarant Control Period, at any annual or special meeting of the Association duly called, any one (1) or more Board members, except for directors appointed by Declarant hereunder, may be removed with or

without cause by a majority of the Total Association Vote and a successor may then and there be elected to fill the vacancy thus created. Further, any director who is more than thirty (30) 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 3.5. Vacancies.** Vacancies in the Board caused by any reason, except the removal of a director by a majority of the Total Association Vote 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 until the next annual meeting. 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 3.6. Compensation.** Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a majority of the Total Association Vote. 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. Directors also may be given nominal gifts or tokens of appreciation by the Association for recognition of services performed, not to exceed a value of One Hundred and 00/100 Dollars (\$100.00) per calendar year. For purposes hereof, reasonable food and beverages purchased for Board meeting shall not be considered compensation.

**Section 3.7. 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 Declarant Control Period, shall be authorized on behalf of the Association to enter into contracts with Declarant and its affiliates.

**Section 3.8. 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 3.9. 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).

**Section 3.10. Regular Board 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, but such meetings shall be held at least once every six (6) months. The newly elected Board shall meet within ten (10) days after each annual meeting of the membership. Notwithstanding the foregoing, during the Declarant Control Period, the Board shall not be required to hold regular meetings.

**Section 3.11. Special Board 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 3.12. 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 3.13. 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 3.14. Open Meetings.** Board meetings need not be open to all members. However, if the Board permits members to attend Board meetings, then 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. The Board may order the removal of any meeting guest who, in the Board's opinion, either disrupts the conduct of business at the meeting or fails to leave the meeting upon request after an announcement of reconvening in executive session.

**Section 3.15. 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.

**Section 3.16. Powers and Duties.** The Board of Directors shall manage the affairs of the Association and shall have all of the powers conferred upon nonprofit corporations by common law, the statutes of the State of Georgia in effect from time to time, and all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in the Articles of Incorporation, these Bylaws, the Declaration, or the Georgia Nonprofit Corporation Code.

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) 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;

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

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

(d) 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; and

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

**Section 3.17. 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. Any and all associations which are hereby subjected to the Declaration must use the same management agent as the Association.

**Section 3.18. Borrowing.** 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 Total Association Vote.

**Section 3.19. 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 Declarant Control Period) against any and all expenses, including attorneys' 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 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.

**Section 3.20. Other Committees.** There shall be such other committees as the Board shall determine with the powers and duties that the Board shall authorize.

**Section 3.21. Service on Committees.** Unless otherwise provided in these Bylaws 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 4. OFFICERS**

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**Section 4.1. 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 4.2. 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 4.3. 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 4.4. 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 4.5. 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 4.6. 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 4.7. 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 4.8. 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 4.9. 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 4.10. Agreements, Contracts, Deeds, Leases, Etc.** Except during the Declarant Control Period, 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. During the Declarant Control Period all agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least one (1) officer or by such other person or persons as may be designated by resolution of the Board of Directors.

**ARTICLE 5. RULE MAKING AND ENFORCEMENT**

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**Section 5.1. 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 Common Property, provided that 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 Declarant during the Declarant Control Period, 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 Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote or to use the Common Property for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board to limit ingress and egress to or from a Lot. In the event that any Occupant of a Lot violates the Declaration, Bylaws, or a rule or regulation and a fine is imposed, notice of such violation shall be sent to the Owner and Occupant, and the fine shall first be assessed against such Occupant; provided, however, if the fine is not paid by the Occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association, and the fine shall be an assessment and a lien against the 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 5.2. 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 thirty (30) days delinquent in any payment due the Association, suspension of the right to vote and the right to use the Common Property shall be automatic) unless and until the Association has sent or delivered written notice to the violator as provided in subsection (a) below. Any such fine or fines may be effective or commence upon the sending of such notice or such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge such fine under subsection (b) below.

(a) **Notice.** If any provision of the Declaration 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 5.3. Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of the Declaration, these Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, or performing maintenance on any Lot upon a failure by the 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 5.2 above. 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 attorneys' 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, these 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 attorneys' fees, shall be assessed against the violating Owner and shall be collected as provided herein for the collection of assessments.

## **ARTICLE 6. MISCELLANEOUS**

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### **Section 6.1. 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 via:

(i) Personal delivery to the addressee; or

(ii) United States mail, first class, postage prepaid; or

(iii) Electronic mail; or

(iv) Facsimile; or

(v) 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 subsection (a) above 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, at the address, electronic mail address or facsimile number which the Occupant has designated in writing with the Secretary or, if no such address has been designated, at the address of the Lot occupied; 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. The Secretary shall promptly provide notice to all Owners of any such change in address.

**Section 6.2. 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 6.3. 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 6.4. 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 6.5. 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 6.6. 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 Total 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 6.7. 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 6.8. Amendment.** These Bylaws 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 the Declaration; or (c) 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 the Declaration. Furthermore, during the Declarant Control Period, Declarant may unilaterally amend these Bylaws for any other purpose; provided, however, any such amendment shall neither materially and adversely affect the substantive rights of any Owner(s) nor adversely affect title to any Lot without the consent of the affected Owner(s).

In addition to the above, these Bylaws may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent of two-thirds (2/3) of the Total Association Vote and the written consent of Declarant (but only during the Declarant Control Period). An Amendment to these Bylaws shall become effective upon recordation in the land records of Gwinnett County, Georgia unless a later effective date is specified in such amendment. Furthermore, no provision of these Bylaws that reserves or grants special rights to Declarant shall be amended without Declarant's prior written consent (but only during the Declarant Control Period).

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 6.9. Books and Records.**

(a) **Right to Inspect.** 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) business 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) the minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;
- (v) all written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;
- (vi) a list of the names and business or home addresses of its current directors and officers; and
- (vii) its most recent annual report delivered to the Georgia Secretary of State.

(b) Inspection. 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 Section 6.9(a) above;
- (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.