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

**FOR**

**CREEKSIDE MANOR**

085357

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

**FOR**

**CREEKSIDE MANOR**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of the date set forth on the signature page hereof by D.R. Horton, Inc., a Delaware corporation ("Declarant").

Declarant is the owner (or if not the owner, with the written consent of such owner as attached hereto) of the real property described in Exhibit "A," which is attached and incorporated by reference. By this Declaration, Declarant imposes upon the Community mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Community, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Community. In furtherance of such plan, Declarant has caused or intends to cause the Creekside Manor Homeowners' Association, Inc., to be formed as a Georgia nonprofit corporation to own, operate, and maintain Common Areas, as defined below, and to administer and enforce the provisions of the Governing Documents.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Community, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Community.

This document does not and is not intended to create a condominium within the meaning of the Georgia Condominium Act, O.C.G.A. Section 44-3-70, and the Association is not subject to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220.

**THIS DECLARATION DISCLOSES SOME IMPORTANT INFORMATION ABOUT THE COMMUNITY FOR THE BENEFIT OF PROSPECTIVE PURCHASERS OF REAL PROPERTY IN THE COMMUNITY. EACH OWNER, BY ACCEPTING A DEED TO PROPERTY IN THE COMMUNITY, ALSO ACCEPTS AND AGREES TO THE MATTERS SET FORTH IN THIS DECLARATION.**

**Article I**  
**DEFINITIONS**

The terms in this Declaration and the attached exhibits and other Governing Documents shall generally be given their commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contract, or agreement.

1.2. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Creekside Manor Homeowners' Association, Inc., as filed with the Secretary of State of the State of Georgia.

1.3. "Association": Creekside Manor Homeowners' Association, Inc., a Georgia non-profit corporation, its successors or assigns.

1.4. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Georgia corporate law.

1.5. "By-Laws": The By-Laws of Creekside Manor, attached as Exhibit "D," as they may be amended.

1.6. "Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.7. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate.

1.8. "Community": The real property described on Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article VII.

1.9. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Community as initially established by Declarant. After Declarant no longer has the right to appoint and remove directors and officers of the Association, such standard may be more specifically determined by the Board of Directors.



1.10. "Declarant": D.R. Horton, Inc., a Delaware corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument executed by the immediately preceding Declarant.

1.11. "Exclusive Garage Easement Area": means that portion of a Unit being the garage area beneath a residence located and constructed on a Unit which is designed for the exclusive use, benefit and enjoyment of the adjacent Unit, as is generally depicted and delineated on Exhibit "E" attached hereto and by this reference incorporated herein and as more particularly described in Section 11.12 hereof. By way of example and not limitation, one Unit will contain three separate garage areas which will serve the Unit upon which the garage is located as well as two adjacent Units. The garage areas which serve the adjacent Units are reserved exclusively for the use, benefit and enjoyment of those Units so served regardless of their location on another Unit.

1.12. "General Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units.

1.13. "Governing Documents": A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, any architectural or design standards as provided for herein, and the Use Restrictions and Rules, each as they may be amended.

1.14. "Limited Common Area": A portion of the Common Area primarily benefiting one or more, but less than all Units, as more particularly described in Article II.

1.15. "Member": A Person subject to membership in the Association pursuant to Section 3.2.

1.16. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.17. "Mortgagee": A beneficiary or holder of a Mortgage.

1.18. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

1.19. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.20. "Plat": The Recorded final plat applicable to the Community or phase of the Community.

1.21. "Record," "Recorded," or "Recording," : Recordation or filing of any document in the Office of the Clerk of the Superior Court of the County of Gwinnett, State of Georgia.

1.22. "Special Assessment": Assessments levied in accordance with Section 8.5.

1.23. "Specific Assessment": Assessments levied in accordance with Section 8.6.

1.24. "Supplemental Declaration": An instrument Recorded pursuant to Article VII which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.25. "Unit": A portion of the Community, whether improved or unimproved, which is intended for development, use, and occupancy as a residence for a fee simple townhome. The term shall include within its meaning, by way of illustration but not limitation, each numbered lot shown on a Recorded subdivision Plat with respect to any portion of the Community, together with the structures, if any, constructed thereon, as well as vacant land intended for further subdivision, but shall not include Common Areas or property dedicated to the public.

In the case of a portion of the Community intended and suitable for subdivision into townhome lots but as to which no subdivision Plat has been Recorded, such property shall be deemed to contain the maximum number of Units permitted under the city or county zoning ordinance applicable to the property until such time as a subdivision Plat is Recorded with respect to all or a portion of the property. Thereafter, the portion encompassed by such Plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not Platted shall continue to be treated as set forth in this paragraph.

1.26. "Use Restrictions and Rules": Those use restrictions and rules affecting the Community, which may be adopted, modified, and repealed as set forth in Article X. The initial Use Restrictions and Rules are set forth on Exhibit "C."

## **Article II** **PROPERTY RIGHTS**

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Unit, subject to:

- a) This Declaration and any other applicable covenants;
- b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- c) The right of the Board and the membership to adopt rules regulating the use and

enjoyment of the Common Area;

d) The Board's right to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents;

e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area subject to the requirements set forth herein;

f) The Board's right to impose reasonable membership requirements and charge reasonable use fees for the use of any recreational facilities or other portions of the Common Area;

g) The Board's right to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of such use fees as the Board may establish;

h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the requirements set forth herein; and

i) Declarant's right to use such property without payment or charge for such purposes as Declarant, in its sole discretion, deem necessary and proper.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.3. Condemnation. If any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation by any authority having the power of condemnation or eminent domain, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

2.4 Limited Common Area. Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use of primary benefit of Owners and occupants within a particular Unit. By way of illustration and not limitation, Limited Common Areas may include a yard or garden area, walkways serving a single Unit and other portions of the Common Area. In the event the Association maintains any area designated

as a Limited Common Area, all costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be allocated among the Owners of the Unit(s) to which the Limited Common Area(s) are assigned as a Specific Assessment.

Initially, any Limited Common Area shall be designated in the deed conveying such area to the Association, on the Recorded Plat, or by Supplemental Declaration; provided, however any such assignment shall not preclude the Declarant from later assigning use of the same Limited Common Area to additional Units, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 7.1.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of Members representing a majority of the total votes in the Association, including a majority of the votes of the Owners affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 7.1, any such assignment or reassignment shall also require Declarant's written consent.

2.5 Use of Recreational Facilities. Declarant may, but shall not be required to, construct recreational facilities on portions of the Common Area such as: tennis courts, a pool, bathhouse, viewing areas, and the like. In the event Declarant constructs such recreational facilities, the following shall apply:

a) For so long as Declarant owns any property subject to this Declaration or may annex additional property to this Declaration, Declarant shall have the right to grant to Persons who are not members of the Association the right to use the recreational facilities. The extent and duration of nonmember use and the fee to be charged shall be determined solely by Declarant. The Declarant may grant nonmember use rights to Persons as an easement appurtenant to such Person's residential real property so that such use rights shall automatically inure to the benefit of such Persons and their heirs and assigns.

b) Any use right granted to nonmembers which extends beyond the time period specified in (a) above shall be valid and may not be terminated by the Association so long as the terms and conditions imposed upon nonmember use by the Declarant are complied with by the nonmember user.

c) Declarant hereby reserves unto itself, its successors and assigns, a non-exclusive, perpetual right and privilege, and easement with respect to the Community for the benefit of Declarant, its successors, assigns, and the above nonmember users, without obligation or charge. These rights shall include, without limitation, an easement for travel across all Common Area in the Community. Declarant shall not be responsible for any fees to be paid by such nonmember.

**Article III**  
**MEMBERSHIP AND VOTING RIGHTS**

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Georgia.

3.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Association's Secretary.

3.3. Voting. Members shall be entitled to one vote for each Unit owned. When more than one Person holds an ownership interest in any Unit, the vote for such Unit shall be exercised as those Owners themselves determine and advise the Association's Secretary prior to any meeting. The Unit's vote shall be suspended in the event more than one Person seeks to exercise it.

**Article IV**  
**RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and maintain the Common Area and all improvements thereon in a manner consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under the Governing Documents, the cost of which shall be a Common Expense.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant and its designees may transfer or convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibits "A" or "B," and leasehold and other property interests. **All such property shall be accepted by the Association "AS IS" without any representation or warranty, express or implied, in fact or by law, with respect thereto, or with respect to the improvements thereon or thereto, and without any representations or warranties regarding future repairs or regarding the condition, construction, accuracy, completeness, design, adequacy of the size or capacity in relation to the utilization, date of completion, or the future economic performance or operations of, or the materials which have been or will be**

**used in such property or repairs.** Declarant shall not be required to make any improvements to the property conveyed to the Association, including, without limitation, dredging or removing silt from lakes or ponds.

Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Community originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines or accommodate changes in the development plan

The Association is responsible for the management, operation and control of the Common Areas at its expense, subject to any restrictions set forth in the deed or other instrument transferring the property to the Association.

4.3. Enforcement. The Association may impose sanctions for violations of the Governing Documents in accordance with procedures set forth in the By-Laws, including reasonable monetary fines, suspension of the right to vote, the right to use any recreational facilities within the Common Area, or any combination of the aforementioned. In addition, in accordance with of the By-Laws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents or Association rules against any party other than the Declarant, if the Association prevails it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action. So long as the Declarant owns any property described on Exhibit "A" or "B", the Declarant may, but shall not be obligated to, take any enforcement action, or exercise any right on behalf of or independent from the Association.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and local governments may enforce their ordinances within the Community.

4.4. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests. For so long as Declarant owns any property described on Exhibits "A" or "B," Declarant may designate sites within the Community for fire, police, and utility facilities; public schools and parks; and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant.

4.6. Indemnification. The Association shall indemnify every officer, director, and committee member, including members of the committees established under Article IX, against all damages and expenses, including attorneys fees, reasonably incurred 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 he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Georgia law.

a) 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 and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

b) Decisions whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party. In deciding whether to bring a civil action against another party, a director is protected by the business judgment rule as explained in the By-Laws.

4.7. Dedication of Common Areas. The Association, acting through the Board, may dedicate portions of the Common Areas to any local, state, or federal governmental or quasi-governmental entity.

4.8. Safety and Security. Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Creeside Manor. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

**No representation or warranty is made that any security system or measures, including any mechanism or system for limiting access to the Community, can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, and Declarant are not insurers or guarantors of safety or security and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.**

**Article V**  
**MAINTENANCE**

5.1. Association's Responsibility.

a) Association's Responsibility for Common Area. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(i) the Common Area, including, but not limited to, all recreational amenities, open space, all landscaping and other flora, natural formations, signage, lighting, irrigation systems and equipment, fences, parks, walls, structures and improvements, any private streets shown as such on a recorded plat, sidewalks, paths, and trails, situated upon the Common Area, a Unit or abutting the Community;

(ii) landscaping, signage, and sidewalks within public rights-of-way within or adjacent to the Community, except to the extent that such responsibility is assumed by a governmental or quasi-governmental body or public utility;

(iii) any lakes, ponds, streams, and/or wetlands located within the Community and all drainage systems, storm water retention, or detention systems for the Community to the extent maintenance is required in the Board's opinion and such area is not to be maintained by a governmental entity or third party;

(iv) such portions of any additional property included within the Area of Common Responsibility as may be dictated by the Declarant, this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance entered into by, or otherwise binding on the Association (including any agreement with any governmental or quasi governmental entity);

(v) any property and facilities owned by Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from Declarant to the Association and to remain a part of the Area of Common Responsibility and to be maintained by



the Association unless and until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association; and,

(vi) electric meter packs attached to the exterior portion of a Unit that serve more than one (1) Unit and electrical wires and conduits serving more than one (1) Unit.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

b) Association's Responsibility for Units. The Association shall maintain in good repair the landscaping and exterior building surface materials, fixtures, and equipment attached thereto as specifically provided herein. All maintenance of Units and dwellings which is not specifically assigned to the Association in this Declaration, or other recorded covenant, shall be the responsibility of the Owner.

(i) The Association shall maintain all landscaping and other flora, and drainage systems, originally installed by the builder within the Community. The Association's responsibilities with respect to maintenance of such landscaping and other flora shall be limited to cutting of grass, trimming and replacement of trees, shrubs, hedges, bushes, flowers, and other plantings and clean-up and removal of cutting, trimmings, and dead plantings, from time to time as reasonably necessary or appropriate as determined in the Board's sole discretion. The Association shall not be responsible for irrigation of landscaping unless otherwise approved by the Board and as may be restricted by governmental regulation. Owners shall not alter such landscaping or landscaping equipment and shall not interfere with the Association's landscaping activities.

(ii) The Association shall be responsible for cleaning, repairing, and repainting the exterior surface material of each townhome dwelling, including, but not limited to, stucco, siding, wood, and trim. Except for windows and doors, the Association shall maintain all exterior building surfaces, gutters, sheathing, and shingles within the Community. The Association shall maintain the sidewalks, landings, stoops, driveways and overhangs to the dwellings. The Association shall maintain the exterior roofing surface (e.g., shingles, decking, and other surface roofing materials) provided, all other portions of the roof systems, and any vents, fans, plumbing stacks, or other items attached to the roof and serving a single dwelling shall remain a part of the dwelling and be the maintenance responsibility of the Owner. The Association shall maintain any fences installed as original construction on the rear portion of the dwelling. Doors and windows shall be the Owner's responsibility unless the Board determines otherwise.

(iii) The Association shall have the right, but not the obligation, from time to time as determined by the Board, in its sole discretion, to make reasonable modifications to the arrangements for maintaining Unit landscaping and landscaping equipment, maintaining the exterior of dwellings, and obtaining and maintaining insurance as required herein.

(iv) The maintenance shall be performed consistent with the Community-Wide Standard.

(v) The Association shall not be liable to any Owner, or any Owner's Occupant, guest, or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Paragraph where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repair or improvements which are the responsibility of the Association.

c) Association Easement. There are hereby reserved to the Association blanket easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under Section 5.1. The Association shall maintain the facilities and improvements within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing 75% of the total votes in the Association and Declarant, so long as Declarant owns any property within the Community, agree in writing at a meeting duly called for such purpose to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with Declarant's prior written approval as long as Declarant owns any property described on Exhibits "A" or "B" of this Declaration.

d) Maintenance Expenses. Except as otherwise provided herein, all costs associated with the Association's maintenance responsibilities shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

5.2. Owner's Responsibility. Except as provided in Sections (a), (b), (c) and (d) above, all other maintenance of the townhome and all other improvements on the Unit or a Limited Common Area appurtenant to a Unit, including, without limitation, the items listed below, shall be the responsibility of the Owner thereof, who shall maintain the Unit in a manner consistent with the Community-Wide standard and this Declaration

a) Owners shall be responsible for maintaining all doors (including garage doors) and windows, including frames, sills, hardware, and screens;

b) All fixtures and equipment installed within a townhome dwelling, commencing at a point where the utility line, pipe, wire, conduit, or systems enter the exterior wall;

c) Any private utility systems, component or item, outside of the exterior wall which serves a single townhome dwelling, including, without limitation, air-conditioning compressors;

d) Any deck, patio, porch, balcony, or courtyard appurtenant to a townhome dwelling;

(e) Any walkway appurtenant to a townhome dwelling.

(f) The Exclusive Garage Easement Area shall be maintained by the Owner of the Unit which benefits from said Exclusive Garage Easement Area, which maintenance shall include repair and replacement of the garage doors appurtenant to the Exclusive Garage Easement Area; provided, however, nothing contained herein shall be construed as obligating the Owner of the benefited Unit to maintain, repair or replace the townhome dwelling or underlying structure serving the townhome dwelling of the burdened Unit Owner.

(g) Any landscaping or other items installed by the Owner to a yard or garden area designated as a Limited Common Area appurtenant to a particular Unit or the building exterior (subject to architectural review). Any additional landscaping planted by an Owner shall be maintained by such Owner and its successors at its expense.

(h) In the event that the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such owner is responsible, the Association may perform such maintenance, repair or replacement for the Owner at the expense of the Owner. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement and levy a Specific Assessment.

5.3. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.4 Party Walls. Each wall that is built as a part of the original construction which serves as the dividing line between two Units and/or separates any two adjoining dwellings shall constitute a party wall. To the extent not inconsistent with the provisions of this Paragraph, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply. The cost of reasonable repair and

maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who had used the party wall may restore it. If other Owners use the party wall thereafter, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner under this Paragraph shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

5.5 Wiring. Wiring for home security systems has been installed for each dwelling. Owners are responsible for the activation, maintenance, and operation of all security systems. Neither the Association, nor the Declarant shall in any way be considered insurers or guarantors of security or safety within the Community, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measure undertaken.

## **Article VI**

### **INSURANCE AND CASUALTY LOSSES**

#### 6.1. Association Insurance.

a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

i) Blanket property insurance covering the full replacement cost of all insurable improvements which the Association is responsible to maintain, including without limitation, the Common Area and the original construction of individual townhomes (excluding improvements and betterments made by Owners or occupants). The property insurance shall provide at a minimum, fire and extended coverage, including vandalism and malicious mischief. The Board may purchase "all-risk" coverage in like amounts;

ii) Commercial general liability insurance on the Area of Common Responsibility insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain additional coverages or limits;

iii) Workers compensation and employers liability insurance, if and to the extent required by law. Such other insurance such as directors and officers liability coverage, and fidelity insurance as the Board, in the exercise of its business judgment, determines advisable.

b) Policy Requirements. The Association shall periodically review the sufficiency of insurance coverage. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon written request, to any Member. The policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may levy a Specific Assessment of the full amount of such deductible against such Owner(s) and their Units.

The Board is authorized to obtain the insurance policies and coverage(s) specified in this Declaration through the Declarant and reimburse the Declarant for the cost thereof. Insurance obtained by or through the Declarant shall satisfy all insurance responsibilities of the Board.

All insurance coverage obtained by the Board shall:

- i) be written with a company authorized to do business in the State of Georgia which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
- ii) be written in the name of the Association as trustee for the Owners, who shall be insured under such policy to the extent of the Owners' interest;
- iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- iv) contain an inflation guard endorsement; and
- v) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

- i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, and the Owners and their tenants, servants, agents, and guests;
- ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of

any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

v) a cross liability provision; and,

vi) a provision vesting in the Board exclusive authority to adjust losses.

c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Community covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable use or building codes. Any damage to or destruction of the improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least 67% of the total votes in the Association, and Declarant, so long as Declarant owns property described in Exhibit "A" or "B," decide not to repair or reconstruct within 90 days after the loss. If the Association determines that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

6.2. Insurance on Units; Damage to Units. Unless the Association carries such insurance, each Owner shall obtain and maintain in effect at all times: (i) property insurance for the full replacement cost, less a reasonable deductible, of all insurable improvements, contents, and personal property contained in his or her Unit; and (ii) insurance covering consequential damages to any other Unit or the Common Area due to occurrences originating within the Owner's Unit caused by the negligence of the Owner, the failure of the Owner to maintain the Unit, and any other casualty within such Owner's Unit which causes damage to the Units of the Common Area.

Within ten (10) days of any written request from the Board of Directors, each Owner shall file with the Association a certificate from the insurer evidencing the insurance coverage required hereunder and, if requested, a copy of the individual policy or policies covering his or

her Unit. Such Owner shall promptly notify the Board in writing in the event such policy is canceled.

Neither the Association nor Declarant shall bear any responsibility for the maintenance, safekeeping or damage to the personal property of any Owner or occupant of a Unit, their family, guests, or invitees, nor shall the Association or Declarant be held liable for the conditions of, or any loss or damage to, any such personal property except to the extent directly and solely attributable to the reckless acts or willful misconduct of the Association, Declarant, or their respective agents or employees.

**Article VII**  
**ANNEXATION AND WITHDRAWAL OF PROPERTY**

7.1. Annexation Without Approval of Membership. Until all property described on Exhibit "B" has been subjected to this Declaration or ten years after the Recording of this Declaration, whichever is earlier, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit "B." Declarant may transfer or assign this right to annex property, provided that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Annexation shall be accomplished by Recording a Supplemental Declaration describing the property being annexed. A Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed to require Declarant to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

7.2. Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing at least two-thirds (2/3) of the total votes in the Association present in person or by proxy at a meeting duly called for such purpose, and the consent of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 7.1. Such annexation shall be accomplished by Recording a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by Declarant, if Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3. Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Section 7.1, for the purpose of removing any portion of the Community from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of

development for the Community. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not Declarant.

7.4. Additional Covenants and Easements. Declarant may subject any portion of the Community to additional covenants and easements by Recording a Supplemental Declaration, concurrent with or after the annexation of the subject property, setting forth such additional covenants and easements. Any such Supplemental Declaration shall require the written consent of the owner(s) of the subject property, if other than Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

### **Article VIII** **ASSESSMENTS**

#### 8.1. Creation of Assessments.

a) Types. There are hereby created, and the Association is authorized to levy three types of assessments: (a) General Assessments as described in Section 8.3; (b) Special Assessments as described in Section 8.5; and (c) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Community, is deemed to covenant and agree to pay these assessments.

b) Personal Obligation and Lien. All assessments, together with interest (computed from the due date of such assessment at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Georgia law), late charges established by Board resolution, costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit and also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. The General Assessment shall be an annual assessment due and payable in advance on the first day of each fiscal year; provided, the Board may by resolution permit payment in two or more installments. If any Owner is delinquent in paying any assessments or other charges levied on



his Unit, the Board may accelerate the installments and require all of the General Assessment to be paid in full immediately.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with Declarant or other entities for payment of Common Expenses.

8.2. Declarant's Obligation for Assessments. The Declarant shall not be liable for payment of assessments on its unsold Units. However, Declarant may, but shall not be obligated to, annually elect to contribute to the Association the difference between the amount of assessments levied on all other Units subject to assessment and the amount of the Association's actual expenditures during the fiscal year (a "Subsidy"). Any Subsidy may be treated, in Declarant's discretion, as either: a voluntary contribution; an advance against future assessments (if any); or a loan by Declarant to the Association. A Subsidy may be evidenced by one or more promissory notes from the Association in favor of Declarant or Declarant may 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. Any Subsidy shall be disclosed as a line item in the Common Expense budget. The payment of a Subsidy in any year shall under no circumstances obligate Declarant to continue payment of such Subsidy in future years.

8.3. Computation of General Assessments. At least 30 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year. General Assessments shall be fixed at a uniform rate for all Units subject to assessment under Section 8.8. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units.

The budget and notice of the amount of the General Assessment for the following year shall be available to each Owner at least 30 days prior to the assessment or installment due date. Such budget and assessment shall become effective unless disapproved at a meeting by at least 67% of the total vote of the Association. There shall be no obligation to call such a meeting unless a petition for a special meeting is presented to the Board within 10 days of the delivery of the notice of assessment.

If a budget is not adopted for any year, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year.

8.4. Reserve Budget and Capital Contribution.

a) The Board may prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. If established, the Board may include as a line item in the Common Expense budget capital contribution in an amount sufficient to permit meeting the Association's projected needs over the budget period. There shall be no obligation to establish a reserve budget and make such assessments. If reserves are not established or are insufficient for the repair or replacement of any capital asset, Special Assessments may be levied.

b) Upon acquisition of record title to a Unit by the first Owner other than Declarant or a builder, a contribution of \$ 500.00 ("Initiation Fee") shall be made by or on behalf of the purchaser to the Association as set forth below. The Initiation Fee shall be in addition to, not in lieu of, any annual or special assessments. The Initiation Fee shall be payable at Closing, shall not be prorated, and the Association shall have all rights under the Declaration for enforcement of assessments if it is not paid. The Initiation Fee shall be deposited into an account of the Association and disbursed from that account (a) \$ 400.00 for operating expenses and costs of the Association in accordance with the Declaration and Bylaws, as amended, and (b) \$ 100.00 of the Initiation Fee shall be held by the Association as a long term "Maintenance Reserve" to be disbursed by the Association for maintenance of any property which the Association is required or permitted to maintain in its sole discretion. The Initiation Fee referred to in this paragraph is payable only one time, and will not be charged subsequent purchasers of the Unit.

8.5. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any Special Assessment which would exceed the amount of the General Assessment in any fiscal year shall require the affirmative vote or written consent of a majority of the total votes in the Association, and the affirmative vote or written consent of Declarant, so long as Declarant owns any property described on Exhibit "A" or "B." Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Special Assessments shall be levied equally on all Units, subject to assessment under Section 8.8.

8.6. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit or Units as follows:

a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance or pest control), which assessments may be levied in advance of the provision of the requested benefit, item, or service as a deposit against charges to be incurred by the Owner; and,

b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws, or rules or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with Section 3.24 of the By-Laws before levying any Specific Assessment under this subsection (b).

8.7. Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges, costs of collection, and attorneys fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages are foreclosed under Georgia law.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While the Association owns a Unit following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged the foreclosed Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.8, including such acquirer, its successors and assigns.

8.8. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month following the transfer or conveyance of an improved Unit with a certificate of occupancy to a Person for residential use. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

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

8.10. Exempt Property. The following property shall be exempt from payment of assessments:

- a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1; and
- b) Any property dedicated to and accepted by any governmental authority or public utility.

### **Article IX** **ARCHITECTURAL STANDARDS**

9.1. General. No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, other site work, exterior alteration of existing improvements, painting or modifying fences, and planting or removal of landscaping materials) shall take place except in compliance with this Article and approval of the appropriate entity under Section 9.2. Notwithstanding this, the Board may, by resolution, exempt certain activities from the application and approval requirements of this Article provided such activities are undertaken in strict compliance with the requirements of such resolution. Any Owner may remodel, paint, or redecorate the interior of structures on his Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of Declarant or the Association.

9.2. Architectural Review. So long as Declarant owns any property described in Exhibit "A" or "B" for development or sale, Declarant shall have exclusive authority to administer and enforce architectural controls under this Article and to review and act upon all applications for construction and modifications within the Community. Declarant's rights under this Article IX may be assigned in whole or in part.

Upon the expiration or assignment of Declarant's authority to control architectural review for all or a portion of the Community, the Board shall create and appoint an Architectural Review Committee ("ARC"). The ARC shall consist of at least three, but not more than five, persons who shall serve and may be removed in the Board's discretion; provided, as long as Declarant owns any property described on Exhibits "A" or "B," it shall be entitled to appoint one member. Until Declarant's authority expires, the ARC shall have no rights or authority except as Declarant may assign. Upon termination of Declarant's authority over architectural review, the ARC shall have authority over modifications, additions, or alterations made on or to existing structures or Units and the adjacent open space. At any time during the review process, so long as it owns any property described in Exhibit "A" or "B," Declarant shall have the right to veto any action taken by the ARC.

For the purposes of this Declaration, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." Reviewers of applications need not be Members. Reviewers may delegate certain rights and responsibilities to qualified individuals to act on its behalf, and their compensation, if any, shall be established from time to time by Declarant or the Board, as applicable. Fees for review of applications under this Article may be required to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals.

### 9.3. Guidelines and Procedures.

a) Design Guidelines. Declarant may prepare architectural standards or design guidelines ("Design Guidelines") for the Community. The Design Guidelines are not the exclusive basis for decisions, but they may provide guidance on specific matters. Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any property described on Exhibit "A" or "B." Thereafter, the ARC shall have the authority to amend the Design Guidelines with the consent of the Board.

b) Procedures. Prior to commencing any activity subject to review, an Owner shall submit an application for approval of the proposed work to the Reviewer. Such application shall be in the form required by the Reviewer and shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation system, utility facilities layout, and other features of proposed construction, as applicable. Before the Owner may begin the proposed activity, the application must be approved in accordance with the procedures described below.

In reviewing each submission, the Reviewer may consider whatever factors it deems relevant, including, but not limited to, harmony of external design with surrounding structures and environment and location in relation to surrounding structures, topography, and finish grade elevation. Decisions of the Reviewer may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are purely subjective and may vary over time and among different Persons. The Reviewer may require relocation of native plants within the construction site, screening, and landscaping as a condition of approval of any submission.

The Reviewer shall respond in writing to an application within 60 days to the address specified by such party at the time of submission. The response may (i) approve the application, (ii) approve a portion of, segments or features of the Plans, and disapprove other portions, or (iii) disapprove an application. The Reviewer may, but shall not be obligated to, set forth the reasons for such finding, and it may make suggestions to cure objections to an application. In the event the Reviewer fails to respond, approval shall be deemed to have been given; provided, no construction which is inconsistent with the Governing Documents shall be deemed approved unless a written variance has been issued. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

If construction does not commence on a project which has been approved within 180 days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval. If construction is not completed on a project for which plans have been approved within a period set forth in the Design Guidelines or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article.

9.4. No Waiver of Future Approvals. Each Owner acknowledges that the Reviewer will change from time to time and that interpretation, application, and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.5. Variance. The Reviewer may authorize variances in writing from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship, or aesthetic or environmental considerations, and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. For purposes of this Section, the inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance.

9.6. Limitation of Liability. The requirements and procedures established by this Article are intended to enhance the overall aesthetics of the Community and shall not create any duty to any Person. A Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring the appropriateness of soils, drainage, and general site work. Neither Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit. In all matters, the Association shall defend and indemnify Declarant, the reviewing body and their members.

9.7. Enforcement. Any structure or improvement placed or made in violation of this Article or the Design Guidelines shall be deemed to be nonconforming, unless a variance has been granted. Upon written request from the Board or Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, Declarant or the Board shall have the right to Record a notice of violation and to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the Owner and Unit and collected as a Specific Assessment.

Unless otherwise specified in writing by a Reviewer granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Community, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the reviewing bodies.

## **Article X**

### **USE RESTRICTIONS AND RULES**

10.1. Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Community in order to enhance all Owners' collective interests, subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, and desires within the Community. The initial Use Restrictions and Rules attached as Exhibit "C," establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests, and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of the Governing Documents.

10.2. Authority to Promulgate Use Restrictions and Rules. The initial Use Restrictions and Rules applicable to all of the Community are attached as Exhibit "C" to this Declaration and may be modified in whole or in part, repealed, or expanded as follows:

a) Subject to the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial Use Restrictions and Rules by a majority vote of the directors at any Board meeting. The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless disapproved at a meeting duly called for such purpose by Members representing at least 51% of the total Association votes and by Declarant, so long as Declarant owns any property described on Exhibit "A" or "B." The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the By-Laws.

b) Alternatively, the Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Members representing at least 51% of the total Class "A" votes in the Association and the approval of Declarant, so long as Declarant owns any property described on Exhibit "A" or "B."

c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the newly-adopted rule to each Owner. The Association shall provide, without cost, a copy of the new Use Restrictions and Rules then in effect to any requesting Member or Mortgagee.

d) The foregoing procedures shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation, speed limits, or landscaping on the Common Area. The Board shall exercise business judgment in the enactment, amendment, and enforcement of such administrative rules and regulations.

e) The foregoing procedures shall not restrict amendments to this Declaration or the Design Guidelines enacted under Section 9.3.

10.3. Owners' Acknowledgment. All Owners and occupants of Units are given notice that use of their Unit or Units is limited by the Use Restrictions and Rules as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into and Recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected, that the Use Restrictions and Rules may change from time to time, and that such changes may not be reflected in a Recorded instrument.

10.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment), neither the Board nor the Members may adopt any rule in violation of the following provisions:

a) Similar Treatment. Similarly situated Owners and occupants shall be treated similarly.

b) Signs. No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. The provisions of this Section shall not apply to any Person



holding a Mortgage who becomes the Owner of any Unit as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof. The Board may impose a fine of One-Hundred and Fifty and No/100 Dollars (\$150.00) per day for display of any sign in violation of this provision which is not removed within twenty-four hours after written demand is delivered to the Owner at that Unit.

c) Displays. The Board may adopt rules governing or prohibiting display of religious and holiday signs, symbols, and decorations outside of structures, and adopt time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

d) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of others, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

f) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; except as may be otherwise provided in Article 16 hereof.

g) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Community.

h) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

i) Activities Incidental to Construction. No rule or action by the Association shall impede Declarant or builders authorized by Declarant from maintaining Common Area and Units upon which they own any facilities necessary or incidental to construction or sale of Units. By way of example and not limitation, no rule shall prohibit Declarant or builders authorized by Declarant from installing signs, maintaining temporary structures for use during construction of a Unit, or from using any dwelling on a Unit as a sales office.

The limitations in this Section 10.4 shall apply only to Use Restrictions and Rules adopted or amended in accordance with Section 10.2; they shall not apply to amendments to this Declaration adopted in accordance with Section 15.2.

**Article XI**  
**EASEMENTS**

11.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2. Easements for Utilities, Etc.

a) There are hereby reserved to Declarant, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Community (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining, and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways, and trails; wetlands and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewers, telephone, gas, and electricity, utility meters; electric meter packs and electrical wires and conduits which serve more than one (1) Unit; and for the purpose of installing any of the foregoing on property which Declarant or the Association owns or within easements designated for such purposes on Recorded plats of the Community.

b) Declarant hereby establishes for the benefit of each Unit a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving such Unit and situated in, on or under any other Unit or the Common Area. The Board of Directors, and without a vote of the Owners, shall have the right, power, and authority to grant permits, licenses, utility easements, and other easements, permits or licenses necessary or desirable for the proper maintenance or operation of the Community under, through, or over the Units and/or the Common Area as may be reasonably necessary to or desirable for the ongoing operation of the Community. In the event that any Owner desires access to the interior of another Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owner of such other Unit(s) at least two (2) days in advance of the date that access is needed and attempt to agree on a convenient date and time for access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a

Unit to which access is needed under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Units, reasonable steps shall be taken to protect such Units and the property of the Owners and Occupants thereof, and damage shall be repaired by the Person causing the damage at its sole expense.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Community for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters, and boxes, as applicable.

c) There is hereby reserved to Declarant, so long as Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibit "A" or "B." To the extent reasonably possible, such easements over Units shall be limited to setback areas adjacent to the perimeter boundary of each Unit.

d) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person or entity exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures of any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.3. Easements for Drainage. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water across all Community property. This right shall include, but is not limited to, altering swales, installing drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping waterflow across any Unit or any property in the Community. 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 or entity causing the damage at its sole expense.

11.4. Easements to Serve Additional Property. Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities on or through such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of the exercise of this easement.

11.5. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, and all police officers, firefighters,

ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board.

11.6. Landscaping and Signage Easements. Declarant and the Association shall have perpetual, non-exclusive easements exercisable by their respective employees, agents, and contractors over those portions of the Community designated as "Landscaping and Signage Easements" (or similar label) on the Recorded subdivision Plats relating to the Community for the purpose of installation, maintenance, repair, and replacement of lot bollards, neighborhood entrance monuments, signs, fences, lighting, irrigation systems, and landscaping within the easement area. The Declarant and Association, in compliance with any applicable laws and regulations, shall have a blanket easement to pump water from any water bodies within the Community for irrigation purposes. No fences, structures, driveways, plantings, swings, wood piles, dog runs, or any other objects, temporary or permanent, shall be permitted in such areas without the Association's prior written approval, other than those initially installed by Declarant. Nothing herein shall obligate Declarant or the Association to exercise such easements or to construct or install any of the foregoing within any Landscaping and Signage Easement.

11.7. Easement to Inspect and Right to Correct. Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within the Community, including Units, and a perpetual, nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, at such Person's own expense, any damage resulting from such exercise.

11.8 Construction and Sale Easement. Notwithstanding any provisions contained in the Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration terminates and thereafter so long as Declarant owns any property in the Community for development or sale, Declarant reserves an easement across the Community for Declarant and any builder or developer approved by Declarant to maintain and carry on development activities, upon such portion of the Community as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near the Community. This easement shall include, without limitation:

a) The right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on, or in any portion of the Community as well as any Unit in the Community,

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

c) The right to tie into 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;

d) The right (but not the obligation) to construct recreational facilities on Common Area;

e) The right to carry on sales and promotional activities in the Community;

f) The right to place direction and marketing signs on any portion of the Community, including any Unit or Common Area;

g) The right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development and sales activities; and,

h) Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices, and may also use recreational facilities available for use by the Community as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Declaration.

11.9 Fence Easement. Declarant hereby reserves an easement across any Unit which borders upon or contains a portion of any pond, lake, dam, water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation, rule, ordinance, or plan approval requirement.

11.10 Adjacent Owner Easement. The adjacent Owner of a townhome dwelling shall have a nonexclusive access and maintenance easement over the adjacent Unit and Common Area to the extent reasonably necessary to perform maintenance and repair of his or her townhome. Exercise of this easement shall be done after reasonable notice and in an expeditious manner. Upon completion of the work the easement holder shall restore the easement property to its prior condition to the extent reasonably practicable.

11.11. Easement for Private Streets, Driveways, Sidewalks and Signs. Declarant hereby grants, conveys, declares, creates, imposes and establishes a perpetual, non-exclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across the private streets, driveways and sidewalks within the Community as depicted on the subdivision plat(s) recorded in the Office of the Clerk of Superior Court of Gwinnett County, Georgia. The right-of-way easement herein granted shall permit joint usage of such easement by (a) the

Owners and Occupants, (b) the legal representatives, successors and assigns of the Owners, and (c) invitees and licensees of the Owners and Occupants. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any right-of-way easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional non-exclusive easements to third parties, over, under and across the easement area. Declarant hereby reserves for the benefit of Declarant and grants to the Association as Common Area, the perpetual nonexclusive right and easement upon, over and across those utility easement areas and private streets, driveways and roads for the installation, maintenance, and use of such streets, driveways and roads, sidewalks, traffic directional signs, grading for proper drainage of said streets, driveways and roads, and related activities and improvements.

11.12. Reservation of Exclusive Garage Easement Area. Declarant hereby grants, conveys, declares, creates, imposes and establishes a perpetual, non-exclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across the Exclusive Garage Easement Area (as that term is defined herein) for the use, enjoyment and benefit of: (a) the Owners and Occupants of the Unit served by said garage area, (b) the legal representatives, successors and assigns of the Owners of the Unit served by said garage area, and (c) invitees and licensees of the Owners and Occupants of the Unit served by said garage area. Such Exclusive Garage Easement Area may be used and enjoyed by the foregoing primarily for parking vehicles and pedestrian access, ingress and egress to the benefited Unit. The Exclusive Garage Easement Area shall include the walls and ceilings of the garage area for purposes of affixing shelves, cabinets, and garage door openers. The boundaries of the Exclusive Garage Easement Area which includes the walls, ceilings and floor are more particularly described as follows: (x) the vertical boundary of the Exclusive Garage Easement Area is the plane formed by the interior face of the studs of the outer walls of the interior of the garage; (y) the lower horizontal boundaries of the Exclusive Garage Easement Area is the plane formed by the upper finished surface of the concrete slab of the garage; and (z) the upper horizontal boundary shall be the plane formed by the lowermost face of the joists of the ceiling enclosing the garage. 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 Exclusive Garage Easement Area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain, repair and replace the structures located thereon. Such easement shall be appurtenant to and run with title to such adjacent Unit for the benefit of said Unit, but shall not be sold, mortgaged, leased or otherwise granted or conveyed separate and apart from such benefitted Unit.

## **Article XII**

### **MORTGAGEE PROVISIONS**

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

12.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

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

b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days; or

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

12.2. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

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 Unit.

12.4. 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 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

### **Article XIII** **DECLARANT'S RIGHTS**

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and duly Recorded.

Declarant and builders authorized by Declarant may maintain and carry on without fee or charge upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction

or sale of Units, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and authorized builders shall have easements for access to and use of such facilities. Declarant shall have the right and an easement to maintain signs in the Area of Common Responsibility for ten (10) years from the recording of this Declaration.

No Person shall record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Community without Declarant's review and written consent. Any instrument Recorded without such consent shall be void and of no force and effect unless subsequently approved by written consent signed by Declarant and Recorded.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules, architectural standard, or Design Guideline made shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns any portion of the Community primarily for development and sale.

#### **Article XIV**

#### **DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

14.1. Agreement to Avoid Litigation. Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Community, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Section 14.2 ("Claims") shall be resolved using the procedures set forth in Section 14.3

14.2. Claims. Unless specifically exempted below, all claims, grievances, or disputes arising out of or relating to the design, construction, or repair of improvements on the Community shall be subject to the provisions of Section 14.3.

Notwithstanding the above, unless all parties otherwise agree, the following shall not be subject to the provisions of Section 14.3:

- a) 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 in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IX (Architectural Standards) and Article X (Use Restrictions and Rules);

b) any suit between Owners, which does not include Declarant or the Association as a party;and,

c) any suit in which any indispensable party is not a Bound Party.

14.3. Mandatory Dispute Resolution Procedures for Claims. **GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED, OR REPAIRED YOUR HOME. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION. FOR PURPOSES OF O.C.G.A. § 8-2-35 et seq, THE DEFINITION OF CONSTRUCTION DEFECT AS SET FORTH IN O.C.G.A. § 8-2-35 et seq. SHALL APPLY.**

a) Notice. The Association shall, no later than 90 days before initiating an action against Declarant or any other contractor, provide service of written notice of claim on the Respondent by certified mail or overnight delivery with return receipt. The notice of claim shall state that the Association asserts a construction defect claim or claims and is providing notice of the claim or claims. The notice of claim shall describe the claim or claims in detail sufficient to explain the nature of the alleged construction defects and the results of the defects. In addition, the Association shall provide to the Declarant or contractor any evidence that depicts the nature and cause of the construction defect, including expert reports, photographs, and videotapes, if that evidence would be discoverable under evidentiary rules.

b) Authority to File Suit. An action by the Association against the Declarant or a contractor to recover damages resulting from construction defects in any of the common elements or limited common elements may be maintained only after the Association complies with the following:

i) The Association first obtains the written approval of each unit's owner whose interest in the common elements will be the subject of the action;

ii) A vote at a duly called meeting of the units' owners to which at least a majority of the votes of the members of the association are allocated;

iii) The full board of directors of the Association and the Respondent have met in person and conferred in a good faith attempt to resolve the Association's claim or the Respondent has definitively declined or ignored the requests to meet with the board of directors of the Association; and,

iv). If O.C.G.A. § 8-2-35 et seq. is in effect, the Association has otherwise satisfied all of the preaction requirements for a claimant to commence an action pursuant to O.C.G.A. § 8-2-35 et seq.

c. Additional Pre-Suit Requirements.

The Association may commence an action only upon the affirmative vote of two-thirds of the votes of the members of the Association. In such a case, the Association shall provide written notice to the owner of each unit of the meeting at which the commencement of an action is to be considered or action is to be taken at least 21 calendar days before the meeting. A copy of the notice shall also be provided to the Declarant at least 21 calendar days before the meeting, so long as Declarant owns any property in the Community for development or sale

In addition, at least three business days in advance of any vote to commence an action by the Association to recover damages resulting from construction defects in any of the common elements or limited common elements of the common interest community, the attorney representing the Association shall provide to each unit's owner a written statement that includes, in reasonable detail:

- i) The defects and damages or injuries to the common elements or limited common elements;
- ii) The cause of the defects, if the cause is known;
- iii) The nature and the extent that is known of the damage or injury resulting from the defects;
- iv) The location of each defect within the common elements or limited common elements, if known;
- v) A reasonable estimate of the cost of the action or mediation, including reasonable attorneys' fees and costs, expert fees, and the costs of testing;
- vi) All disclosures that the unit owner is required to make upon the sale of the unit; and,
- vii) If O.C.G.A. § 8-2-35 et seq. is in effect, any additional information required by O.C.G.A. § 8-2-35 et seq.

d. Destructive Testing. The Association or an attorney for the Association shall not employ a person to perform destructive tests to determine any damage or injury to a unit, common element, or limited common element caused by a construction defect unless:

- i) The person is licensed as a contractor pursuant to law;
- ii) The Association has obtained the prior written approval of each unit's owner whose unit or interest in the common element or limited common element will be affected by such testing;

- iii) The person performing the tests has provided a written schedule for repairs;
- iv) The person performing the tests is required to repair all damage resulting from such tests in accordance with state laws and local ordinances relating thereto;
- v) The Association or the person so employed obtains all permits required to conduct such tests and to repair any damage resulting from such tests;
- vi) Reasonable prior notice and opportunity to observe the tests is given to the Declarant or contractor against whom an action may be brought as a result of the tests; and,
- vii) If O.C.G.A. § 8-2-35 et seq. is in effect, any additional requirements set forth in O.C.G.A. § 8-2-35 et seq., have been satisfied.

Provided, however, the board of directors of the Association may, without giving notice to the units' owners, employ a contractor and such other persons as are necessary to make such immediate repairs to a unit or common element within the community as are required to protect the health, safety, and welfare of the units' owners.

14.4 Allocation of Costs of Resolving Claims. All costs, including any attorneys' fees, incurred in complying with this Section shall be borne by the Party incurring same. Any and all subsequent costs, including any attorneys' fees, shall be made in accordance with the Right to Repair Act as set forth in O.C.G.A. § 8-2-35 et seq., if in the Right to Repair Act is in effect.

14.5 Enforcement of Resolution. After resolution of any Claim, if any party fails to abide by the terms of any agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 14.3. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

## **Article XV**

### **GENERAL PROVISIONS**

15.1. Duration. Subject to the limitations of Georgia law, this Declaration shall have perpetual duration. If Georgia law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall remain in effect for the maximum period permitted and shall automatically be extended at the expiration of such period for successive periods of 20 years each. Notwithstanding the above, 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 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

15.2. Amendment. This Declaration may be amended as provided in this Section. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

a) By Declarant. So long as Declarant owns any property subject to or which may be subjected to this Declaration, it may unilaterally amend this Declaration to (i) bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) enable any title insurance company to issue title insurance coverage; (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans; or (iv) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans; provided, any such amendment shall not adversely affect the title to any Owner's Unit unless any such Unit Owner consents in writing. Further Declarant may unilaterally amend this Declaration for any other purpose; provided, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder, nor shall it adversely affect title to any Unit without the consent of the affected Unit's Owner.

b) By the Owners. This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the Members representing at least two-thirds (2/3) of the votes in the Association and the consent of Declarant (so long as Declarant owns any of the property described in Exhibit "A" or "B").

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

15.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

15.4. Litigation. No judicial, administrative, or arbitration proceeding for any claim, grievance, or dispute arising out of, resulting from or relating to anything other than the design, construction or repair of improvements on the Community, shall be commenced or prosecuted by the Association unless approved in writing by 75% of the total Association vote taken at a meeting duly called pursuant to the Bylaws for such purpose. This Section shall not

apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to *ad valorem* taxation; (d) counter-claims brought by the Association in proceedings instituted against it; or (e) claims set forth in Section 14.2. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

15.5. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration or other Recorded declaration, covenants, and restrictions applicable to any portion of the Community from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

15.6. Compliance. Every Owner and occupant of any Unit shall comply with the Governing Documents. Subject to the terms of Article XIV, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

15.7. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board or its designee at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.8. Exhibits. Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 15.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

## **Article XVI**

### **RESTRICTIONS ON LEASING**

16.1 Leasing. In order to protect the equity of the individual Members, to carry out the purpose for which the Association was formed by preserving the character of the Community as a homogenous residential community of predominantly owner-occupied homes and by preventing the Community from assuming the character of a renter-occupied neighborhood, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially owner-occupied, leasing of Units shall be governed by the restrictions imposed by this Article. Except as provided herein, the leasing of Units shall be prohibited.

## 16.2 Definitions.

(a) Leasing means regular, exclusive occupancy of a Unit by any person(s) other than the Owner for which the Owner received any consideration or benefit, including, but not limited to, a fee, rent, gratuity or emolument. For purposes hereof the following shall not constitute leasing: (i) occupancy by a roommate of an Owner Occupant; (ii) occupancy by a member of the Owner's family, (iii) occupancy by one or more wards if the Unit is owned by their legal guardian, or (iv) occupancy by one or more beneficiaries of a trust if the Unit is owned in trust by the trustee.

(b) Open Leasing Status. Any Unit that is designated as being in "Open Leasing Status" shall authorize a Unit to be leased at any time. For purposes of this Section only, a lease shall continue, regardless of extensions or renewals, for so long as the existing lessee remains as lessee. The lease shall terminate at such time as the existing lessee ceases to be lessee. Unless so converted to Restricted Leasing Status, a Unit designated as being in Open Leasing Status shall remain in Open Leasing Status until such time as title to the Unit is conveyed or transferred to another person or entity, after which conveyance the Unit shall be converted to Restricted Leasing Status regardless of the continued occupancy by the same lessee unless the new Owner requests that the Unit remain in Open Leasing Status within ninety (90) days of said conveyance. Open Leasing Status may be temporarily conferred upon a Unit as provided in Section 16.4 below or may be applied for as provided in Section 16.3 below.

(c) Restricted Leasing Status. Any Unit that is designated as being in "Restricted Leasing Status" shall prohibit a Unit Owner from leasing his or her Unit except as may be provided below. All Units shall be in Restricted Leasing Status unless converted to Open Leasing Status as provided in Section 16.3 below.

16.3 General. No Owner of a Unit in Restricted Leasing Status may lease his or her Unit if seven (7%) percent or more of the Units in the Community are in Open Leasing Status, except as provided in Section 16.4 below for cases of undue hardship. Any Owner of a Unit in Restricted Leasing Status may apply in writing to the Board of Directors for conversion to Open Leasing Status in accordance with rules and regulations promulgated by the Board of Directors. Upon receipt of such written application, the Unit shall be placed at the end of a waiting list for conversion to Open Leasing Status. At such times as less than seven (7%) percent of the Units are in Open Leasing Status, the Board shall notify the Owner of the Unit at the top of the waiting list of its conversion to Open Leasing Status, and such Owner shall have ninety (90) days within which to lease the Unit or it shall automatically revert to Restricted Leasing Status. Any Unit in Open Leasing Status shall automatically be converted to Restricted Leasing Status if the Unit is not subject to an approved lease for ninety (90) or more consecutive days.

16.4 Undue Hardship. Notwithstanding the provisions of Section 16.3 above, the Board of Directors shall be empowered to allow reasonable leasing of a Unit upon application in accordance with this Article to avoid undue hardship, including, but not limited to the following situations: (1) a Unit Owner must relocate his or her residence outside the Atlanta metropolitan area and cannot, within six (6) months from the date that the Unit was placed on the market, sell the Unit except at a price below the current appraised market value, after having made

reasonable efforts to do so; (2) the Owner dies and the Unit is being administered by his or her estate; and (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Unit, in which case the Unit Owner must reapply every year for renewal of the hardship exception. Those Owners who have complied with this Section, have demonstrated that the inability to lease their Unit would result in undue hardship, and have obtained the requisite written approval of the Board may lease their Units for such duration as the Board reasonably determines is necessary to prevent undue hardship.

Any Owner who believes that he or she must lease his or her Unit to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application. When an application is approved, the Owner shall provide the Board with the name and phone number of the lessee and the Owner's address other than at the Unit and other such information as the Board may reasonably require within ten (10) days after a lease has been signed by both parties.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Section. Any transaction which does not comply with this Article shall be voidable at the option of the Board of Directors.

16.5 Leasing Provisions. Such leasing as is permitted by this Article shall be governed by the following provisions:

(a) General. Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing in a form approved by the Board prior to the effective date of the lease. The Board shall maintain in its files and, upon request, shall provide to any Owner a form which is deemed acceptable. There shall be no subleasing or assignment of leases unless approved in writing by the Board. All leases must be for an initial term of at least one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Unit, the phone number of the lessee and the Owner's address other than at the Unit and other such information as the Board may reasonably require within ten (10) days after a lease has been signed by both parties. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations and the lease form shall provide that the Owner has made available to the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(b) Notice. At least seven (7) days prior to entering into the lease of a Unit, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall

notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

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

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

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law.

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

16.6 Liability for Assessments. When a Unit Owner who is leasing his or her Unit fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same



amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

16.7 Mortgagee Exemption. This Article shall not apply to any leasing transaction entered into by the Declarant, the Association or an institutional holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 25th day of May, 2005.

**DECLARANT: D.R. Horton, Inc. , a Delaware corporation,**

By: [Signature] [SEAL]

Its: VP

Attest: [Signature] [SEAL]

Its: VP of Finance

Signed, sealed, and delivered this 25th day of May, 2005, in the presence of:

[Signature]  
WITNESS

[Signature]  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

[AFFIX NOTARY SEAL]



**EXHIBIT "A"**

**Land Initially Submitted**

ALL That tract or parcel of land lying or being in Land Lot 156, of the 6th District, Gwinnett County, Georgia, and being more particularly described as follows:

Commencing at a point on the westerly right-of-way line of Pleasant Hill Road (right-of-way varies) said point being the POINT OF BEGINNING;

THENCE proceeding along the said westerly right-of-way line of Pleasant Hill Road South 08 degrees 51 minutes 44 seconds East, a distance of 75.07 feet to a point;

THENCE continuing along the said westerly right-of-way line of Pleasant Hill Road southerly a distance of 609.68 feet along the arc of a curve to the right, having a radius of 5,675.00 feet and being subtended by a chord which bears South 05 degrees 26 minutes 20 seconds East, for a distance of 609.39 feet, to a point;

THENCE leaving the said westerly right-of-way line of Pleasant Hill Road proceed South 82 degrees 23 minutes 26 seconds West, a distance of 287.14 feet to a point;

THENCE South 85 degrees 15 minutes 20 seconds West, a distance of 268.45 feet to a point;

THENCE South 67 degrees 05 minutes 06 seconds West, a distance of 100.32 feet to a point;

THENCE North 05 degrees 39 minutes 20 seconds West, a distance of 117.09 feet to a point;

THENCE North 07 degrees 20 minutes 36 seconds West, a distance of 116.80 feet to a point;

THENCE South 72 degrees 27 minutes 00 seconds West, a distance of 125.84 feet to a point;

THENCE North 00 degrees 20 minutes 10 seconds West, a distance of 166.44 feet to a point;

THENCE North 33 degrees 27 minutes 45 seconds West, a distance of 100.21 feet to a point;

THENCE North 35 degrees 36 minutes 28 seconds East, a distance of 19.52 feet to a point;

THENCE North 03 degrees 39 minutes 02 seconds East, a distance of 142.84 feet to a point;

THENCE North 29 degrees 10 minutes 43 seconds West, a distance of 313.56 feet to a point along the southern edge of a lake;

THENCE along the said southern edge of a lake North 74 degrees 42 minutes 26 seconds East, a distance of 73.61 feet to a point;

THENCE continuing along the said southern edge of a lake North 71 degrees 02 minutes 16 seconds East, a distance of 38.32 feet to a point;

THENCE continuing along the said southern edge of a lake North 67 degrees 57 minutes 53 seconds East, a distance of 43.65 feet to a point;

THENCE continuing along the said southern edge of a lake North 68 degrees 42 minutes 21 seconds East, a distance of 48.03 feet to a point;

THENCE continuing along the said southern edge of a lake North 72 degrees 43 minutes 40 seconds East, a distance of 35.92 feet to a point;

THENCE continuing along the said southern edge of a lake North 59 degrees 14 minutes 22 seconds East, a distance of 49.65 feet to a point;

THENCE continuing along the said southern edge of a lake North 58 degrees 32 minutes 22 seconds East, a distance of 41.58 feet to a point;

THENCE leaving the said southern edge of a lake proceed South 78 degrees 26 minutes 08 seconds East, a distance of 441.73 feet to a point;

THENCE South 10 degrees 21 minutes 55 seconds East, a distance of 100.47 feet to a point;

THENCE South 78 degrees 05 minutes 44 seconds East, a distance of 157.98 feet to the POINT OF BEGINNING.

Said parcel containing 678,226 Square Feet or 15.56992 Acres, more or less.

**EXHIBIT "B"**

**Land Subject to Annexation**

The following property is not subject to this Declaration, but may be annexed in accordance with the terms of the Declaration. Any parcel or tract of land which is:

1. Adjacent to the property described on Exhibit "A" or adjacent to property previously annexed to the Declaration.
  
2. Located within a one (1) mile radius of the property described in Exhibit "A".

**Exhibit "C"**  
**Initial Use Restrictions and Rules**

The purpose of Rules is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities that fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Article IX, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Unit under one set of circumstances, the same thing may be disapproved for another Unit under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Board from taking enforcement action in any appropriate circumstances.

The following shall apply to all of the Community until such time as they are modified pursuant to Article X of the Declaration.

1. General. The Community shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any sales professional retained by Declarant to assist in the sale of property described on Exhibits "A" or "B," offices for any property manager retained by the Association or business offices for Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.

2. Rules and Restrictions. The Community is subject to the following rules and restrictions unless expressly authorized by, and then subject to such conditions as may be imposed by the Board of Directors:

a) Parking. The following restrictions shall apply to all Owners, occupants, invitees and guests: (Construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Areas);

(i) Parking any vehicles on public or private streets or thoroughfares within the Community. The guest parking spots within the community will be for guests only, therefore no homeowner vehicles are allowed to be parked in the guest parking spaces;

(ii) Parking of commercial vehicles or equipment, tractor trailer cabs, commercial equipment, mobile homes, recreational vehicles, ATVs, boats and other watercraft, trailers, stored vehicles or inoperable vehicles is prohibited in places other than enclosed garages, **with the exception being small panel trucks with company names on the sides that are used as primary vehicles;**

(iii) Any vehicle, boat, motorhome, trailer, or recreational vehicle, left upon any portion of the Common Area, within the public rights-of-way, or on any streets within the

Community for longer than forty-eight (48) consecutive hours is subject to removal without further notice. The costs of such removal shall be an assessment against the Owner of same; and,

(iv) Trucks with mounted campers which are an Owner or occupants' 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;

(b) Animals. Other than a reasonable number of dogs, cats, or other usual and common household pets, raising, breeding, or keeping of animals of any kind is prohibited. Pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Pets shall **not** be kept outside of the Unit at any time, except while being walked on a leash. **Pet owners are required to clean up after pets.** Pets shall be registered, licensed, and inoculated as required by law. Failure to comply with these restrictions will result in fines as provided for in the By-Laws.

(c) Business. An Owner or occupant residing in a Unit may conduct business activities within the structure located on the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Community; (iii) the business activity does not involve excessive visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Community; and (iv) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

This subsection shall not apply to any activity conducted by Declarant or a builder approved by Declarant with respect to its development and sale of the Community or its use of any Units which it owns within the Community.

(d) Trash Cans. Trash cans and recycle bins shall not be stored in the driveway other than the day of trash collection.

(e) Gardening Materials. Garden hoses, hose reels, sprinklers, and other gardening material and equipment must be stored from view when not in use.

(f) Garages. Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area is not permitted without the prior approval of the Reviewer pursuant to Article IX; and

(g) Satellite Dishes. Satellite dishes and antennas which are one meter or less in diameter or diagonal measurement; shall be permitted, *provided that* any such device is placed in

the least conspicuous location on the Unit (generally being the rear yard) at which an acceptable quality signal can be received. Permitted Devices that may be seen from the street require written documentation from a professional installer regarding the reason for such placement.

(h) Fences. Written approval must be obtained from the ARC prior to any placement, erection, or maintenance of any fence or fencing type barrier of any kind. Under no circumstances shall any fence be placed, erected, allowed, or maintained upon any Unit closer to the street than the rear one-third of the residence located on the Unit. Additional restrictions may apply to corner lots. Fences styles will be established by the Board of Directors for each community. The Board of Directors shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Area.

(h) Miscellaneous. Written approval must be obtained from the ARC prior to any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of the Unit in accordance with the provisions of Article IX of the Declaration. This shall include, without limitation, signs, permanent basketball hoops, swing sets and similar sports and play equipment; hedges, walls, dog runs, or animal pens, of any kind; garbage cans; woodpiles; swimming pools; docks, piers, and similar structures.

(i) Portable Play Equipment. Equipment, including portable basketball hoops, soccer goals, pitching/catching devises, children's toys, bicycles, tricycles and other such items, must be stored from view when not in use.

3. Prohibited Conditions. The following shall be prohibited within the Community:

(a) Quiet Enjoyment. Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;

Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community (the inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board); Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(b) Laws. Any activity which violates local, state, or federal laws or regulations is prohibited. However, the Board shall have no obligation to take enforcement action in the event of a violation;

(c) Disrepair. Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair;

(d) Irrigation. Sprinkler or irrigation systems or wells of any type which draw upon water from creeks, streams, wetlands, or other ground or surface waters within the Community, except that Declarant and the Association shall have the right to draw water from such sources; and

(e) Motorized vehicles. Motorized vehicles on pathways or unpaved Common Areas, except for public safety vehicles and vehicles authorized by the Board.

(f) Annoyance. Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(g) Burning. Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Dumping. Dumping of grass clippings, leaves, or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, lake, or elsewhere within the Community is prohibited. Fertilizers and pre-emergents may be applied to landscaping provided care is taken to minimize runoff;

(i) Trash. Accumulation of rubbish, trash, or garbage is prohibited except between regular garbage pick ups, and then only in approved containers;

(j) Drainage. Obstruction or rechanneling of drainage flows after installation of drainage swales, storm sewers, or storm drains is prohibited, except that Declarant and the Association shall have such right;

(k) Subdivision. Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and Recorded, except that Declarant shall be permitted to subdivide or re-plat Units which it owns;

(l) Common Area Landscaping. Removal alteration or pruning of landscaping on the Common Area;

(m) Firearms. Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(n) Fireworks. Use and discharge of firecrackers and other fireworks;

(o) Fuel. On site storage of fuel, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment; and,



(p) Vegetation. Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within or outside the Community, or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution.

(q) Patio Enclosures. The enclosure of patios is strictly prohibited under any and all conditions.