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## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE TOWNHOMES AT MADDOX FARM**

**This Declaration of Covenants, Conditions and Restrictions for The Townhomes at Maddox Farm, made on the date hereinafter set forth by Winkler & Grant Properties LLC, Georgia limited liability company, as successor in interest by merger to Winkler, Witherow & Grant Developers LLC, a Georgia limited liability company (hereinafter referred to as the "Declarant").**

### **WITNESSETH:**

**WHEREAS**, pursuant to those certain Warranty Deeds recorded in Deed Book 934 Pages 407-410, Murray County, Georgia Land Records, that certain land more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof was conveyed to Winkler, Witherow & Grant Developers LLC;

**WHEREAS**, on October 26, 2022, Winkler, Witherow & Grant Developers LLC merged into Declarant, with Declarant being the surviving entity;

**WHEREAS**, Declarant, as successor in interest by merger to Winkler, Witherow & Grant Developers LLC, is the owner of certain land more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof; and

**WHEREAS**, the Declarant wishes to establish and assure a uniform plan for the development of the Property and to enhance and protect the economic and aesthetic value and desirability of the Property and the health, safety, and welfare of the residents of the Property;

**NOW, THEREFORE**, Declarant hereby declares that the real property described in said attached Exhibit "A" attached hereto and incorporated herein by reference, is hereby subjected to the provisions of this Declaration and shall be held, transferred, sold, conveyed, used, occupied, mortgaged and otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens hereinafter set forth, which are for protecting the value and desirability of and which shall run with the title to the real

property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of the real property now and hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each owner of all or any portion thereof.

#### ARTICLE 1 NAME.

*Section 1.01 Name.* The name of the Property is The Townhomes at Maddox Farm, which property is a residential property owners' development.

#### ARTICLE 2 DEFINITIONS.

*Section 2.01 Definitions.* Generally, terms used in the Governing Documents shall have their normal, generally accepted meanings or the meanings given in the Georgia Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in the Governing Documents shall be defined as follows:

- (1) "Additional Property" means the real property described in Exhibit "B" attached hereto and incorporated herein, which Declarant may, but shall have no obligation to, submit to the Community as provided in this Declaration.
- (2) "Approved Builder" means a home builder approved by Declarant for the construction of a Dwelling Unit, which home builder has been granted rights of an Approved Builder hereunder by Declarant in a written instrument. A home builder shall continue to be an Approved Builder for so long as it owns at least one (1) Lot for the purpose of construction of a Dwelling Unit and resale of the Dwelling Unit. John M Grant and Grant Builders shall be an Approved Builder
- (3) "Architectural Control Committee" or "ACC" means the committee established to exercise the architectural review powers set forth in ARTICLE 10 hereof, which shall be the Board of Directors of the Association unless by resolution the Board appoints a separate Architectural Control Committee.
- (4) "Area of Common Responsibility" means the Common Property, together with any areas which become the Association's responsibility under this Declaration or by contract or agreement with any other Person. The office of any property manager employed by or contracting with the Association, if located on the Property, or any public rights of way within or adjacent to the Property, may be part of the Area of Common Responsibility.
- (5) "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of Maddox Farm Owner's Association, Inc., filed with the Secretary of State of the State of Georgia.
- (6) "Association" means Maddox Farm Owner's Association, Inc., a Georgia nonprofit corporation, its successors or assigns.
- (7) "Board" or "Board of Directors" means the appointed and elected body of the Association responsible for management and operation of the Association.
- (8) "By-Laws" mean the By-Laws of Maddox Farm Owner's Association, Inc., attached to this Declaration as Exhibit "D" and incorporated herein by reference, as may be amended.
- (9) "Common Area" or "Common Property" means any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.
- (10) "Common Expenses" mean the expenses anticipated or actually incurred by the Association for the general benefit of the Community in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Dwelling Units.
- (11) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "A" attached hereto and incorporated herein by this reference, and such additions thereto as may be made by Supplementary Declaration as provided in this Declaration.
- (12) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically

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

(13) "Declarant" shall mean and refer to Winkler, Witherow & Grant Developers, LLC, a Georgia limited liability company, and such of its successors-in-title who shall: (i) acquire, from a predecessor "Declarant," for the purpose of development or sale, all or any portion of the real property described in Exhibit "A" hereto, and (ii) be designated as the "Declarant" in the deed of transfer by which such successors-in-title shall so acquire its interest in such real property, or by written assignment of Declarant rights in an instrument recorded in the Official Records. In all events there shall only be only one (1) "Declarant" at any one time; in no event shall more than one (1) Person have the right to exercise the power and authority of the "Declarant" at any one time.

(14) "Declarant Control Period" means the period of time during which Declarant is entitled to appoint and remove the members of the Board of Directors as provided in Section 3.01 (b) of the Bylaws.

(15) "Declaration" means this Declaration of Covenants, Conditions, and Restrictions for The Townhomes at Maddox Farm, as may be amended.

(16) "Department of Housing and Urban Development" or "HUD" shall mean and refer to that governmental agency of the United States of America so entitled and any agency or authority of the United States of America which succeeds the Department of Housing and Urban Development.

(17) "Design Guidelines" means the design guidelines and application and review procedures as more specifically addressed in Article 10 hereof.

(18) "Director" means those persons elected as the body responsible for management and operation of the Association.

(19) "Dwelling Unit" shall mean any portion of the Property as improved, intended for any type of independent ownership for use and occupancy as a residence by one household and shall, unless otherwise specified, include within its meaning (in way of illustration, but not limitation) patio, single family detached, or zero lot line homes, as may be used and defined as herein provided or as provided in subsequent Declarations covering all or part of the Property. If a Dwelling Unit is attached by party wall(s) to one or more other Dwelling Units, the boundary between Dwelling Units shall be a line running along the center of the party wall(s) separating the Dwelling Units. The ownership of each Dwelling Unit shall include the exclusive right to use and possession of any and all portions of the heating and air conditions units which are appurtenant to and serve each Dwelling Unit (including, but not limited to, compressors, conduits, wires, and pipes) and any porch deck, patio, steps, wall, roof, foundation, sunroom, or any similar appurtenance as may be attached to a Dwelling Unit when such Dwelling Unit is initially constructed. The ownership of each Dwelling Unit shall include, and there shall automatically pass with the title to each Dwelling Unit as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interest of an Owner in the Common Property.

(20) "Effective Date" means the date that this Declaration is recorded in the office of the Clerk of the Superior Court of the county wherein the Property lies.

(21) "Electronic Document" shall mean information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form.

(22) "Electronic Signature" shall mean a signature created, transmitted received, or stored by electronic means and includes but is not limited to a secure electronic signature.

(23) "Eligible Mortgage Holder" means a holder, insurer, or guarantor of a recorded first mortgage secured by a Dwelling Unit who is entitled to notice of certain items as set forth herein.

(24) "Exempt Property" shall mean and refer to all land and structures and Common Areas owned by the Association for so long as the Association shall be the owner thereof.

(25) "Federal Communication Commission" or "FCC" shall mean and refer to that governmental agency of the United States of America so entitled and any agency or regulatory authority of the United States of America which succeeds the Federal Communication Commission.

- (26) "Federal Housing Administration" or "FHA" shall mean and refer to that governmental agency of the United States of America so entitled and any agency or regulatory authority of the United States of America which succeeds the Federal Housing Administration.
- (27) "Georgia Nonprofit Corporation Code" shall refer to O.C.G.A. § 14-3-101, *et seq.*, as may be amended.
- (28) "Governing Documents" shall mean this Declaration and all exhibits hereto (including the Bylaws), the Articles of Incorporation, Rules and Regulations, and any design standards that are adopted by the Board or ACC, all as may be supplemented or amended from time to time.
- (29) "Institutional Mortgagee" or "Institutional Holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), and all similar corporations and agencies or departments of the United States Government or of any state or municipal government.
- (30) "Leasing" shall mean the regular, exclusive occupancy of a Dwelling Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit including, but not limited to, a fee, service, gratuity, or emolument, provided, however, for the purposes of this Declaration, Leasing shall not include the occupancy of a Dwelling Unit by the child or parent of an Owner. For purposes hereof, occupancy by a roommate of an Owner who occupies the Dwelling Unit as such Owner's primary residence shall not constitute Leasing hereunder.
- (31) "Lot" means any plot of land in the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a dwelling site as shown on the Survey.
- (32) "Majority" means those eligible votes, Owners, Members, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.
- (33) "Member" means those Persons entitled to membership as provided in this Declaration.
- (34) "Mortgage" means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.
- (35) "Mortgagee" or "Mortgage Holder" means the holder of any Mortgage.
- (36) "Occupant" means any Person occupying all or any portion of a dwelling or other property located within the Property for any period of time, regardless of whether such Person is a tenant or the Owner of such property.
- (37) "Officer" means an individual who is elected by the Board of Directors to serve as President, Vice President, Secretary, or Treasurer, or such other subordinate officers as the Board may determine necessary.
- (38) "Official Records" shall mean the official land records of the Clerk of the Superior Court of County where the Property is located.
- (39) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Dwelling Unit located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.
- (40) "Person" shall mean any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, company, or other organization that is recognized as a separate legal entity under Georgia Law.
- (41) "Plat" shall mean the plat or plats of survey for the Community, as amended and/or supplemented, recorded in the Official Records. The Plat is incorporated herein by reference as fully as if the same were set forth in its entirety herein.
- (42) "Property" means that real estate, which is submitted to the provisions of this Declaration, as described in Exhibit "A" attached hereto and incorporated herein by reference.
- (43) "Rules and Regulations" shall mean and refer to those rules and regulations promulgated by the Board pursuant to this Declaration and the Bylaws, as may be amended.

- (44) "Secure Electronic Signature" shall mean an electronic or digital method executed or adopted by a party with the intent to be bound by or to authenticate a record, which is unique to the person using it, is capable of verification, is under the sole control of the person using it and is linked to data in such a manner that if the data are changed, the electronic signature is invalidated.
- (45) "Supplementary Declaration" shall mean an amendment or supplement to this Declaration that subjects additional property to this Declaration or imposes additional restrictions and obligations on the property described therein, or both.
- (46) "Total Association Vote" shall mean the eligible votes attributable to the entire membership of the Association as of the record date for such action, whether or not such members are present or represented in the meeting, if any, where such votes are to be cast, and the written consent of Declarant for so long as Declarant owns any property for development and/or sale within the Community.
- (47) "Veterans Administration" or "VA" shall mean and refer to that governmental agency of the United States of America so entitled and any agency or authority of the United States of America which succeeds the Veterans Administration.

### **ARTICLE 3 PROPERTY SUBJECT TO THIS DECLARATION AND COMMON PROPERTY.**

*Section 3.01 Property Hereby Subjected To this Declaration.* The real property described in Exhibit "A" attached hereto and by this reference made a part hereof is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration. Every grantee of any interest in the Property which is now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance of such interest, whether or not it shall be so expressed in any such deed or other conveyance, and whether or not it shall be signed by such person, and whether or not such person shall otherwise consent in writing, shall take subject to this Declaration and to the terms and conditions hereof, and shall be deemed to have assented to said terms and conditions.

*Section 3.02 Other Property.* Only the real property described in Section 1.01(42) is made subject to this Declaration. However, by one (1) or more Supplementary Declarations, other real property may be subjected to this Declaration, as provided in ARTICLE 17.

*Section 3.03 Conveyance of Common Property by Declarant to Association.* Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall be Common Property to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

*Section 3.04 Removal of Improvements by Declarant.* During the Declarant Control Period, Declarant shall have the right, privilege, and option from time to time to remove, add, reconfigure, relocate, modify, and alter any and all improvements located on the Common Property.

*Section 3.05 Partition of Common Property.* The Common Property shall remain undivided, and no Owner or any other Person, but excluding Declarant, shall bring any action for partition or division of the whole or any part of the Common Property without the written consent of all Owners and all holders of all Mortgages encumbering any portion of the Community.

### **ARTICLE 4 ASSOCIATION MEMBERSHIP, VOTING RIGHTS, BOARD OF DIRECTORS, AND MEETINGS.**

*Section 4.01 Membership in the Association.* Every Person who is the record owner of a fee interest in any Dwelling Unit that is subject to this Declaration shall automatically be a member in the Association. Membership shall not include Persons who hold a security interest only and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Dwelling Unit. In the event of multiple Owners of a Dwelling Unit, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall go along with and may not be separated from ownership of any Dwelling Unit.

*Section 4.02 Voting.* Members shall be entitled to one (1) equal vote for each Dwelling Unit owned. When more than one (1) Person holds an ownership interest in any Dwelling Unit, the vote for such Dwelling Unit shall be cast as those Owners decide and instruct the Secretary prior to any meeting. If the Secretary is not instructed, the Dwelling Unit's vote shall be suspended in the event more than one (1) Owner of a Dwelling Unit attempts to cast it.

*Section 4.03 Meetings.* Subject to the other provisions of this Article, all matters concerning meetings of Members of the Association, including the time within which and the manner in which notice of any of said meetings shall be given to said Members, and the quorum required for the transaction of business at any of said meetings shall be as specified in the By-Laws of the Association, as amended from time to time and by law.

#### ARTICLE 5 ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

*Section 5.01 Liability.* Except as otherwise provided herein, each Dwelling Unit is hereby allocated equal liability for Common Expenses.

(a) Except as provided below, or elsewhere in the Governing Documents, the amount of all Common Expenses shall be assessed against all the Dwelling Units.

(b) The Board of Directors shall have the power to assess expenses specifically pursuant to this Article and the Act, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Article shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.

(c) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Dwelling Units or by the licensees or invitees of any such Dwelling Unit or Dwelling Units may be specially assessed against such Dwelling Unit or Dwelling Units.

#### ARTICLE 6 ASSOCIATION RIGHTS AND RESTRICTIONS.

*Section 6.01 The Association.* The Association, acting through its Board of Directors, shall have the right and authority, in addition to and not in limitation of all other rights it may have:

(a) To make and to enforce reasonable Rules and Regulations governing the use of the Community, including the Dwelling Units and the Common Property;

(b) To enforce the provisions of the Governing Documents by imposing reasonable monetary fines, exercising self-help powers, and suspending use and voting privileges and services paid for as a Common Expense; these powers, however, shall not limit any other legal means of enforcing the Governing Documents by either the Association or, in an appropriate case, by an aggrieved Owner;

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

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

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

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

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

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

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

*Section 6.02 Litigation.* No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of the Owners as hereinafter provided. The Board shall prepare a budget of the total estimated cost of the litigation or proceeding which shall be submitted to the Owners for a vote along with the estimate of the total cost of the litigation or proceeding made by the attorney being retained by the Association for the litigation or proceeding. No capital contribution or reserve account funds shall be used for funding the costs of litigation or proceedings. The proposed litigation or proceeding, the budget, and the special assessment for litigation, must all be approved by a vote of the Owners representing at least two-thirds (2/3) of the Total Association Vote. This Subsection shall not apply, however, to (i) actions relating to the collection of unpaid assessments, including, without limitation, the foreclosure of liens; (ii) actions brought by the Association to enforce any covenant in this Declaration, any provision in the Bylaws, which is an exhibit hereto, and the Rules and Regulations of the Association (including, without limitation, the use restrictions and rules and architectural standards); (iii) proceedings involving challenges to ad valorem taxation; (iv) counterclaims brought by the Association in proceedings instituted against it; (v) any land-use or zoning proceedings; or (vi) actions brought by the Association for damages in magistrate court; or (vii) actions for breach of contract brought by the Association against vendors providing goods and services to the Association where the Association has a contract with such vendor. This Subsection shall not be amended unless such amendment is approved by

the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

*Section 6.03 Variances.* Notwithstanding anything to the contrary contained in this Declaration, the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws the Rules and Regulations and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

## ARTICLE 7 ASSESSMENTS.

*Section 7.01 Purpose of Assessment.* The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Dwelling Units as may be authorized from time to time by the Board of Directors and allowing the Association to fulfill its duties and responsibilities as set forth in the Governing Documents of the Community.

*Section 7.02 Creation of the Lien and Personal Obligation for Assessments.* Each Owner of any Dwelling Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; (b) special assessments, to be established and collected as hereinafter provided; and (c) specific assessments against any particular Dwelling Unit which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines imposed hereunder. All such assessments, together with late charges, interest not to exceed twelve percent (12%) per annum, costs, and reasonable attorney's fees actually incurred, in the maximum amount permitted under the Act, shall be a charge on the Dwelling Unit and shall be a continuing lien upon the Dwelling Unit against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Dwelling Unit at the time when the assessment became due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Dwelling Unit, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. No Owner may exempt himself or herself from liability or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

*Section 7.03 Billing of Assessments.* Annual assessments shall be levied at a uniform rate per Dwelling Unit and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days written notice, of the annual assessment for delinquents.

*Section 7.04 Exempt Property.* Each Dwelling Unit now or hereafter made subject to this Declaration shall be exempt from the assessments, charges and liens created herein while owned by Declarant. All Common Property, including any Dwelling Unit which may be designated for use as such by Declarant, shall be exempt from the assessments, charges, and liens created therein.



*Section 7.05 Lien for Assessments.* All sums assessed against any Dwelling Unit pursuant to this Declaration, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Dwelling Unit in favor of the Association and the Association shall be entitled to file such a lien in the Official Records. Such lien shall be superior to all other liens and encumbrances on such Dwelling Unit, except for: (a) liens for ad valorem taxes on the Dwelling Unit; (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the Official Records and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument; (c) the lien of any secondary purchase money mortgage covering the Dwelling Unit, provided that neither the grantee nor any successor grantee on the secondary purchaser money mortgage is the seller of the Dwelling Unit; and (d) the lien of any mortgage recorded prior to the recording of the Declaration. All other Persons acquiring liens or encumbrances on any Dwelling Unit after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

*Section 7.06 Effect of Non-Payment of Assessment and the Remedies of Association.* Any assessments or installments thereof which are not paid when due shall be delinquent, and the Owner shall be in default as follows:

(a) If any assessment or charge or any part or installment thereof, is not paid in full within ten (10) days of the due date, or such later date as may be provided by the Board of Directors: (1) a late charge equal to the greater of \$10.00 or 10% of the amount not paid may be imposed without further notice or warning to the delinquent Owner; (2) interest at the rate of 10% per annum, or such higher rate as may be authorized by the Act, shall accrue from the due date; (3) the Board may accelerate and declare immediately due any unpaid installments of that Owner's assessments and charges and upon acceleration, the Owner shall lose the privilege of paying such assessments and charges in installments, unless the Board otherwise reinstates such privilege in writing; however if the Association has pending legal action against an Owner for unpaid assessments or charges, then no notice shall be required to accelerate unpaid installments of any annual or special assessments that come due during any fiscal year after such legal action commences, until all amounts owed are paid in full or the Board otherwise reinstates such privilege in writing; and (4) the Association may bring legal action to collect all sums owed under the Declaration and Georgia law including but not limited to, an action to foreclose on the Dwelling Unit in accordance with Georgia law.

(b) If assessments or other charges, or any part thereof, remain unpaid more than 30 days after the due date, the Owner's right to vote and use the Common Property are suspended automatically until all amounts owed are paid in full or the Board of Directors otherwise reinstates such rights in writing; provided, however, the Board may not deny ingress or egress to or from a Dwelling Unit or deny necessary parking of clearly and properly identified handicapped vehicles used by handicapped Owners or Occupants protected by the Fair Housing Amendments Act of 1988.

(c) If part payment of assessments or other charges is made, the amount received may be applied first to post-judgment attorneys' fees, costs, and expenses, then to costs and attorneys' fees not reduced to a judgment, then to interest, then to late charges, then to delinquent assessments and then to current assessments. Late charges may be assessed on delinquencies that are created by the application of current payments to outstanding delinquent assessments or charges.

*Section 7.07 Computation of Operating Budget and Assessment.* It shall be the duty of the Board at least twenty-one (21) days prior to the Association's annual meeting to prepare and deliver to each member a budget covering the estimated costs of operating the Community during the coming year and a notice of

the assessments to be levied against each Dwelling Unit for the following year. The budget and the assessment shall become effective unless disapproved at a duly called and constituted annual meeting of the Association by a vote of a Majority of the Total Association Vote; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting. Notwithstanding the foregoing, in the event that the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. In such case, the Board may propose a new budget at any time during the year at a special meeting of the Association. The proposed budget and assessment shall be delivered to the Members at least twenty-one (21) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to budgets considered at special meetings.

*Section 7.08 Special Assessments.* In addition to the annual assessment provided for in this Article, the Board may at any time levy a special assessment against all Owners, notice of which shall be sent to all Owners; provided, however, prior to becoming effective, any special assessment which would cause the total of special assessments levied against any Dwelling Unit in one calendar year to exceed two hundred (\$200.00) dollars (except as provided in Section 8.03 herein) first shall be approved by a Majority of the Total Association Vote.

*Section 7.09 Capital Budget and Contribution.* The Board shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in Section 7.07. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

*Section 7.10 Statement of Account.* Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Dwelling Unit, or a lender considering a loan to be secured by a Dwelling Unit, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Dwelling Unit. The Association shall respond in writing within five (5) days of receipt of the request for a statement; provided, however, that the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars or such higher amount as may be authorized under the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Dwelling Unit as of the date specified therein.

*Section 7.11 Date of Commencement of Assessments.*

(a) Assessments shall commence as to each Dwelling Unit on the day on which such Dwelling Unit is conveyed to a Person other than Declarant. Declarant shall not be responsible for the payment of any type of assessment; provided, however, assessments shall commence on Dwelling Units containing occupants that are owned by Declarant on the first day of the month following the occupancy of the Dwelling Unit. Subject to Section 7.11(b), below, a Dwelling Unit shall be occupied for residential purposes when a certificate of occupancy has been issued and has been conveyed to an Owner who intends to occupy the Dwelling Unit as a dwelling, or, if the Dwelling Unit is occupied as a dwelling before such conveyance, the date of such occupancy. The first assessment shall be adjusted according to the number of months then remaining in that fiscal

year. Subsequent assessments shall be due and payable on the first business day of the Association's fiscal year, unless provided otherwise by the Board of Directors.

(b) Any Dwelling Unit that has been approved by Declarant for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant or any other Person, so long as such Dwelling Unit is approved for use as a model home and is not occupied for residential purposes.

**Section 7.12 Specific Assessments.** The Board shall have the power to specifically assess an amount against a Dwelling Unit pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to ARTICLE 5 of the Bylaws and the costs of maintenance performed by the Association for which the Owner is responsible for under Section 14.03 this Declaration shall be specific assessments. The Board may also specifically assess Owners for the following Association expenses:

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

(b) expenses of the Association which benefit all Dwelling Units, but which do not provide an equal benefit to all Dwelling Units, may be assessed equitably among all Dwelling Units according to the benefit received; and

(c) other expenses specifically contemplated as specific assessments in this Declaration.

**Section 7.13 Failure to Assess.** The omission or failure of the Board to fix assessment amounts or rates or to deliver to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collection may be assessed retroactively by the Association.

**Section 7.14 Budget Deficits During Declarant Control.** During the Declarant Control Period, Declarant may, but shall have no obligation to, (i) advance funds to the Association in the form of a loan or gift sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances, if in the form of a loan, shall be evidenced by a promissory note or notes from the Association in favor of Declarant and shall not be deemed a conflict of interest by the directors and officers appointed by Declarant to execute the promissory note or notes, provided, however, the failure to execute a note shall in no way diminish or eliminate the obligation of the Association to repay to the Declarant all sums which the Declarant has loaned the Association, or (ii) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

**Section 7.15 Surplus Funds and Common Profits.** Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such

common profits to the payment of Common Expenses shall, at the Board's option, either be distributed equally to the Owners or credited to the next assessment chargeable to the Owners or added to the Association's reserve account.

*Section 7.16 Initiation Fee.* Each purchaser of a Dwelling Unit (other than the holder of any first Mortgage on a Dwelling Unit who becomes the Owner of a Dwelling Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage) shall pay to the Association at the closing of each sale or resale of a Dwelling Unit a non-refundable initiation fee in the amount equal to three (3) times the then current monthly installments of the annual assessment. The initiation fee shall not be deemed an advance payment of regular or special assessments. The Board shall have discretion to increase the initiation fee by resolution of the Board; provided, however, the initiation fee shall not be changed by the Board without Declarant's consent during the Declarant Control Period. In the event such initiation fee is not paid in accordance with this Section, such amount shall be a specific assessment against such Dwelling Unit, which may be collected as provided in this Article.

#### ARTICLE 8 INSURANCE AND CASUALTY LOSSES.

*Section 8.01 Association Insurance.* The Association, acting through its Board of Directors or its duly authorized agent, shall have the authority to and shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Property and the Dwelling Units the Association is required to maintain (excluding improvements and betterments made by the Owners and the personal property of the Owners). In this regard, the Association shall use commercially reasonable efforts to ensure that the "all-risk" property insurance cover all fixtures and appliances originally included in the Dwelling Units in addition to the other physical structures on other portions of the Area of Common Responsibility to the extent that the Association has assumed responsibility for maintenance, repair and/or replacement thereof in the event of a casualty. If blanket "all-risk" coverage is not generally available at reasonable cost, then at a minimum an insurance policy providing fire and extended coverage, including coverage for vandalism and malicious mischief, shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured peril. It shall be the responsibility of each Owner to obtain a H06 or contents policy on the Owner's personal property. The Board also shall obtain a commercial general liability policy covering occurrences commonly insured against arising out of or in connection with the use, ownership, or maintenance of the Area of Common Responsibility. If generally available at reasonable cost, the commercial general liability policy shall have at least a One Million and 00/100 Dollars (\$1,000,000.00) combined single limit as respects bodily injury and property damage and at least a Two Million and 00/100 Dollars (\$2,000,000.00) limit per occurrence and in the aggregate. The liability insurance obtained by the Association pursuant to this Declaration shall cover the Association and its officers, directors, agents and employees, the Owners, and their respective Mortgagees. The Association shall be designated as the named insured. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners or Occupants, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Dwelling Units pursuant to Section 7.12 hereof. All insurance coverage obtained by the Board of Directors shall be governed by the following provisions:

- (a) All policies shall be written with a company authorized to do business in the State of Georgia;
- (b) Exclusive authority to adjust losses under policies obtained by the Association

shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto;

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

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

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

(f) The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in and around the county in which the Community is located; and

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

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

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

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

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

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

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

In addition to other insurance required by this Section 8.01, the Association shall obtain, as a Common Expense, worker's compensation insurance if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, and flood insurance, if advisable. In addition to the other insurance required by this Section 8.01, the Board may obtain a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined by the Board using its best business judgment.

*Section 8.02 Individual Insurance.* By virtue of taking title to a Dwelling Unit subject to the terms of this Declaration, each Owner agrees to obtain and maintain in effect at all times: (i) property insurance for full replacement cost, less reasonable deductible, of all insurable improvements on his or her Dwelling Unit; and (ii) insurance coverage covering consequential damages to any other Dwelling Unit or the Common Property due to occurrences originating within the Owner's Dwelling Unit caused by the negligence of the Owner, the failure of the Owner to maintain the Dwelling Unit, and any other casualty within such Owner's Dwelling Unit which causes damage to the Dwelling Units or the Common Property. 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 the Owner's Dwelling Unit. Such Owner shall promptly notify the Board in writing in the event such policy is canceled.

*Section 8.03 Damage and Destruction - Insured by Association.* Immediately after damage or destruction by fire or other casualty to any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, a proposal not to repair or reconstruct such property is approved by at least seventy-five percent (75%) of the Total Association Vote (including the Owner(s) of any damaged Dwelling Units). If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members of the Association, levy a special assessment against the Owner of each Dwelling Unit. Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition.

*Section 8.04 Damage and Destruction Insured by Owners.* The damage or destruction by fire or other casualty to all or any structures or improvements on a Dwelling Unit shall be repaired by the Owner thereof in a manner consistent with the original condition of the Dwelling Unit or such other plans and specifications as are approved by the ACC within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. The Owner shall pay any costs which are not covered by insurance proceeds.

*Section 8.05 No Priority Over First Mortgagees.* Nothing contained herein gives any Owner or other party a priority over any rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Dwelling Unit on which there is a Mortgagee endorsement shall be disbursed jointly to such Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee.

## ARTICLE 9 CONDEMNATION.

*Section 9.01 Condemnation of Common Property.* In the event of a taking by condemnation or eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after the taking, Owners holding at least seventy five percent (75%) of the Total Association Vote (other than votes of Declarant) and Declarant otherwise agree, the Association shall restore or replace the improvements taken on the remaining land included in the Common Property to the extent lands are available. Declarant's vote is required hereunder only during the Declarant Control Period. The provisions of Section 8.03 of this Declaration, above, applicable to damage to improvements located on the Common Property, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

*Section 9.02 Disbursement of Net Funds.* If the taking does not involve any improvements on the Area of Common Responsibility, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors shall determine.

#### ARTICLE 10 ARCHITECTURAL CONTROLS.

*Section 10.01 Architectural Standards.* Except as otherwise provided herein, no Owner, Occupant, or any other person may, without first obtaining the written approval of the ACC:

- (a) Make any encroachment onto the Common Property;
- (b) Make any exterior change, alteration, or construction on a Dwelling Unit (including without limitation, painting, repainting, regarding, altering, or replacing a mailbox, or making significant landscaping modifications, except repainting the exterior of a Dwelling Unit with the same paint color shall not be considered an exterior change or alteration); or
- (c) Erect, place or post any object, sign, clothesline, fence, playground equipment, basketball goal, deck, pond, outdoor fireplace, exterior animal containment facility, waterfall or water garden, light, artificial vegetation, exterior sculpture, fountain, flag, storm door or window, mailbox, or other thing on the exterior of the Dwelling Unit, in any windows of the Dwelling Unit, or on any Common Property.

Notwithstanding the foregoing, nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of a Dwelling Unit, or to paint the interior of the Dwelling Unit any color desired; provided, however, modifications or alterations to the interior of screened porches, patios, and any other portion of a Dwelling Unit visible from outside the Dwelling Unit shall be subject to approval of the ARC (but the requirement to obtain approval of the ARC shall not apply to the interior finishes in any Dwelling Unit).

*Section 10.02 Design Guidelines.* Declarant may prepare the initial design and development guidelines (the "Design Guidelines") that shall be applicable to all construction activities within the Community. The Design Guidelines may contain general provisions applicable to all of the Community, as well as specific provisions which vary from one portion of the Community to another depending upon the location, unique characteristics, and intended use. The ACC shall have sole and full authority to adopt and amend the Design Guidelines from time to time, without the consent of the Owners. The ACC shall make the Design Guidelines, if any, available to Owners and Approved Builders, and all such Persons shall conduct their activities in strict accordance with such Design Guidelines. In the discretion of the ACC, such Design Guidelines may be recorded in the Official Records, in which event the recorded version, as it may unilaterally be amended from time to time by the Architectural Review Committee by recordation of amendments thereto, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time. Any amendments to the Design Guidelines adopted from time to time by the ACC in accordance with this Section 10.02 shall apply to construction and modifications approved after the date of such amendment only, and shall not apply to plans or specifications previously approved or require modifications to or removal of structures previously approved by the ACC.

*Section 10.03 Procedure.* The standard for approval of such improvements shall include, but not be limited to: (a) aesthetic consideration, (b) materials to be used, (c) compliance with the Community-Wide Standard and the Governing Documents, (d) harmony with the external design of the existing buildings, Dwelling Units and structures, and the location in relation to surrounding structures and topography, and (e) any other matter deemed to be relevant or appropriate by the ACC. Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. The ACC or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled

to stop any construction which is not in conformance with approved plans. The ACC or the Board, subject to this Section, may allow such encroachments on the Common Property as it deems acceptable. If the ACC fails to approve or to disapprove such application within forty-five (45) days after the application and such information as the ACC may reasonably require shall have been submitted, its approval will not be required and this Section will be deemed complied with; provided, however, even if the requirements of this Section are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Governing Documents or applicable zoning ordinances.

*Section 10.04 Does not Apply.* This Article shall not apply to the activity of Declarant, nor to the construction of improvements or modifications to the Common Property by or on behalf of the Association. Notwithstanding anything else contained in this Section the Declarant may at any time assign the responsibility of the Declarant under this Section to the Board.

*Section 10.05 Architectural Control Committee.*

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

(b) *After Development and Sale.* After such time as Dwelling Units have been constructed and all Dwelling Units have been sold and closed, or after the Declarant has assigned its responsibility hereunder to the Board as described in Section 10.04 the ACC shall consist of the Board unless the Board delegates to other Persons the authority to serve on the ACC. The ACC shall have the authority to select and employ professional consultants to assist it in discharging its duties, the cost of such consultants to be paid by the Owner of any Dwelling Unit for which plans and specifications have been submitted for approval. The Owner of any such Dwelling Unit shall be responsible for paying the full costs of each review, whether or not submitted plans and specifications are approved by the ACC, and the ACC may require payment of all such costs prior to approval of plans and specifications. The Association, by and through the ACC, also may charge reasonable fees to cover the cost of review or inspections performed hereunder, and any such fees shall be published in the design standards that are adopted by the Board or ACC. Notwithstanding anything to the contrary herein, the ACC shall have the authority to select and employ professional consultants to assist it in discharging its duties, the costs of such consultants to be paid by the Owner of any Dwelling Unit for which plans and specifications have been submitted for approval. The Owner of any such Dwelling Unit shall be responsible for paying the full costs of each review, whether or not submitted plans and specifications are approved by the ACC, and the ACC may require payment of all such costs prior to approval of plans and specifications. The ACC also may charge reasonable fees to cover the cost of review or inspections performed hereunder, and any such fees shall be published in the design standards for the Community.

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



**Section 10.06 LIMITATION OF LIABILITY.** REVIEW AND APPROVAL OF ANY APPLICATION PURSUANT TO THIS SECTION MAY BE MADE ON ANY BASIS, INCLUDING SOLELY THE BASIS OF AESTHETIC CONSIDERATIONS, AND NEITHER THE BOARD NOR THE ACC SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE DESIGN, QUALITY, STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, NOR FOR ENSURING COMPLIANCE WITH BUILDING CODES, ZONING REGULATIONS, AND OTHER GOVERNMENTAL REQUIREMENTS. NEITHER THE ASSOCIATION, THE BOARD, THE ACC, NOR ANY MEMBER OF ANY OF THE FOREGOING SHALL BE HELD LIABLE FOR ANY INJURY, DAMAGES, OR LOSS ARISING OUT OF THE MANNER, DESIGN, OR QUALITY OF APPROVED CONSTRUCTION ON OR MODIFICATIONS TO ANY DWELLING UNIT.

**Section 10.07 No Waiver of Future Approvals.** Each Owner acknowledges that the members of the Board and the ACC will change from time to time and that interpretation, application, and enforcement of the architectural standards may vary accordingly. The approval of the ACC of any proposals, plans, and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the ACC, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

**Section 10.08 DISCLAIMER.** THE ACC AND THE BOARD OF DIRECTORS DO NOT WARRANT OR REPRESENT, THAT THEIR DECISIONS UNDER THIS ARTICLE CONSTITUTE, AND THEIR DECISIONS SHALL NOT BE INTERPRETED AS CONSTITUTING, AN APPROVAL AS TO COMPLIANCE WITH ANY BUILDING CODE, REGULATION, OR ORDINANCE, OR ANY OTHER CEDE, REGULATION, ORDINANCE, OR LAW, NOR THAT THEIR DECISIONS UNDER THIS ARTICLE REFLECT UPON THE STRUCTURAL INTEGRITY OF ANY PROPOSED ALTERATION OR IMPROVEMENT. NEITHER THE ASSOCIATION, THE BOARD, THE DECLARANT, THE ACC, OR MEMBER OF ANY OF THE FOREGOING SHALL BE HELD LIABLE FOR ANY INJURY, DAMAGES OR TOSS ARISING OUT OF THE MANNER, DESIGN, OR QUALITY OF APPROVED CONSTRUCTION ON OR MODIFICATIONS TO ANY DWELLING UNIT.

**Section 10.09 Enforcement.** Any construction, alteration, or other work done in violation of this Section or the Governing Documents shall be deemed to be nonconforming. Upon written request from the Board, an Owner in violation shall, at his or her own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as it existed prior to the construction, alteration, or other work. Should such Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as it existed prior to the construction, alteration, or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the benefited Dwelling Unit. In addition to the above, the Board shall have the authority and standing on behalf of the Association, to impose reasonable fines, together with interest at twelve percent (12%) per annum thereon, and to pursue all legal and equitable remedies available to enforce the provisions of this Section and its decisions or those of the ACC. If any Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Property in violation of this Section, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration, or construction remain on the Common Property without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration, or construction. Furthermore, the Board shall have the authority to record notices of violation of the provisions of this Section.

*Section 10.10 Variance.* The ACC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted Rules and Regulations. Such variances may only be granted, however, when unique circumstances dictate, and no variance shall: (i) be effective unless in writing; (ii) be contrary to the restrictions set forth in this Declaration; or (iii) estop the ACC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost to construct, or the terms of any financing shall not be considered a hardship warranting a variance.

*Section 10.11 Commencement of Construction.* Except in the cases of new construction, all improvements approved by the ACC hereunder must be commenced within one year from the date of approval. Approved plans for new construction and changes and modifications thereto must be commenced within five (5) years of the date the plans were approved. If not commenced within one year from the date of such approval, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. Additionally, except with written ACC approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the ACC hereunder shall be completed within 180 days of commencement, unless otherwise agreed in writing by the ACC. Notwithstanding anything to the contrary herein, this provision shall not apply to activities by the Declarant or a Builder during the construction of Dwelling Units. Notwithstanding anything to the contrary stated herein or the Design Guidelines, no changes, modifications, and improvements approved by the ACC shall be commenced until the Owner conspicuously posts an approval permit and such permit shall remain conspicuously until all construction activities are completed. Said approval permit shall serve only to provide notice to the Community that the change, modification, and/or improvement being made to a Dwelling Unit has been approved by the ACC, and shall be in addition to, and not in lieu of, all necessary permits or approvals required by the county in which the Community is located, or other governmental authorities.

*Section 10.12 Approval of Contractors, Landscapers and Architects.* Any contractor, landscaper, or architect, prior to performing any work on any Dwelling Unit must first be approved by Declarant (or the ACC if the Declarant has assigned the rights of the Declarant to the ACC), as to financial stability, building, landscaping or design experience and ability to build, landscape or design structures or grounds of the class and type of those which are to be built on the Community. Such approval may be granted or withheld in the sole and uncontrolled discretion of the ACC. Moreover, no Person shall be approved as a contractor, landscaper, or architect unless such Person obtains his income primarily from construction, landscaping, or design of the type which the contractor, landscaper or architect is to perform upon the Dwelling Unit, and has provided Declarant or ACC, as applicable, evidence of public liability insurance and worker's compensation insurance.

## ARTICLE 11 RESTRICTIONS.

*Section 11.01 Use Restrictions.* Each Owner of a Dwelling Unit shall be responsible for ensuring that the Owner's family, guests, tenants, and Occupants comply with all provisions of this Declaration and the Governing Documents. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants, or Occupants, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants, or Occupants. Use restrictions regarding the use of Dwelling Units and the Common Property are as follows and also as may be adopted by the Board in accordance with the terms hereof and as specified in the By-Laws.

*Section 11.02 Rules.* The Board may, from time to time, without consent of the Owners, adopt, modify, or delete Rules and Regulations applicable to the Community. The Rules and Regulations shall be distributed to all Owners prior to the date that they are to become effective and after distribution shall be binding upon all Owners and Occupants of Dwelling Units until and unless overruled, canceled, or modified, by Declarant (until such time as Declarant no longer has the right to appoint and remove directors and officers of the Association pursuant to Section 3.01(b) of the Bylaws) or by a Majority of the Total Association Vote, at a regular or special meeting. Notwithstanding the above, until such time as Declarant no longer has the right to appoint and remove directors and officers of the Association pursuant to Section 3.01(b) of the Bylaws, no Rules and Regulations which affect Declarant may be adopted, modified, or deleted without the written consent of Declarant.

*Section 11.03 Use of Dwelling Units.* Each Dwelling Unit shall be used for residential purposes only. No trade or business of any kind may be conducted in or from a Dwelling Unit, except that the Owner or Occupant residing in a Dwelling Unit may telecommute from or conduct such ancillary business activities within the Dwelling Unit so long as:

- (a) The existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the Dwelling Unit;
- (b) The business activity does not involve visitation of the Dwelling Unit by non-domestic employees, clients, customers, suppliers, or other business invitees in greater volume than would normally be expected for guest visitation to a residential dwelling without business activity;
- (c) The business activity conforms to all zoning requirements for the Community;
- (d) The business activity does not increase traffic in the Community in excess of what would normally be expected for Dwelling Units in the Community without business activity (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);
- (e) The business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;
- (f) The business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community; and does not otherwise violate any other provision of the Governing Documents, as determined in the Board's discretion; and
- (g) The business activity does not result in a materially greater use of common area facilities or Association services.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is engaged in full or part-time; whether such activity is intended to or does generate a profit; or whether a license is required therefor. Notwithstanding the above, the use of a Dwelling Unit by an on-site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this Section. Notwithstanding anything to the contrary herein, nothing in this Section shall be construed as prohibiting the Declarant or a Builder from maintaining model homes or speculative housing, construction trailers or sales offices on Dwelling Units in the Community.

*Section 11.04 Number of Occupants.* The maximum number of Occupants in a Dwelling Unit on a Dwelling Unit shall be limited to two (2) people per bedroom in the Dwelling Unit. "Occupancy," for purposes hereof, shall be defined as staying overnight in a Dwelling Unit for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year. Upon written application, the Board shall

grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto. If an Owner of a Dwelling Unit is a corporation, partnership, trust, or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the person(s) who will occupy the Dwelling Unit. The designated person(s) to occupy the Dwelling Unit may not be changed more frequently than once every six (6) months.

*Section 11.05 Use of Common Properties.* There shall be no obstruction of the Common Property, nor shall anything be kept, parked, or stored on any part of the Common Property without the prior written consent of the Association, except as specifically provided herein. With prior written Board approval, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Property for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Property hereunder shall assume, on behalf of such Owners and such Owner's guests, Occupants and family, all risks associated with the use of the Common Property and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents, or employees. The Board of Directors shall be permitted to charge such Owner or Owners reasonable fees, as determined in the Board's sole discretion, in connection with the reservation and use of any portion of the Common Property.

*Section 11.06 Occupants Bound.* All provisions of the Governing Documents that govern the conduct of Owners and which provide for sanctions against Owners shall also apply to Occupants even though Occupants are not specifically mentioned. The Owner shall be responsible for ensuring that an Occupant, and the guests, invitees and licensees of an Owner of Occupant strictly comply with all provisions of the Governing Documents. Fines may be levied against Owners or Occupants. If a fine is levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.

*Section 11.07 Nuisance and Noise.* Noxious, destructive, or offensive activity shall not be carried on upon the Community. Each Owner shall refrain from any act or use of his or her Dwelling Unit which could reasonably cause embarrassment, discomfort, nuisance, or annoyance to other Owners or Occupants. An Owner or Occupant shall not conduct activities within a Dwelling Unit or on any portion of the Community in a manner that interferes with or causes disruption to the use and quiet enjoyment of another Dwelling Unit by its respective Owner and Occupant, including, without limitation, the use of stereo speakers or equipment that will, in the reasonable discretion of the Board of Directors, interfere with the rights, comfort or convenience of other Owners or Occupants. Furthermore, without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier, or other sound device, except for devices as may be used exclusively for security purposes, shall be located, installed, or maintained upon the exterior of any Dwelling Unit unless required by law. Notwithstanding the foregoing, any siren or device for security purposes shall contain a device that causes it to automatically shut off within fifteen (15) minutes. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Dwelling Unit. No Dwelling Unit on the Community shall be used, in whole or in part, for the storage of any property or thing that will cause a Dwelling Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye. Moreover, no substance, thing, or material may be kept on any portion of the Community that will discharge foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the surrounding property. Furthermore, no noxious, destructive, or offensive activity shall be conducted within any portion of the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property on the Community. No Owner or Occupant shall maintain any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. No damage to or waste of the Common Property, or any part thereof, shall be permitted by any Owner or such Owner's family member, guest, tenant, or invitee. Each Owner shall indemnify and

hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by any Owner or such Owner's family member, guest, tenant, or invitee. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights.

*Section 11.08 Traffic Regulations.* All vehicular traffic on any streets or alleys in the Community shall be subject to the provisions of the state and local laws concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable Rules and Regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits and including modifications of those in force on public streets, within the Community. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of state and local laws and such Rules and Regulations promulgated by the Association, the Rules and Regulations of the Association shall govern. Only drivers properly licensed to operate motor vehicles on the public roads within the State of Georgia may operate any type of motor vehicle within the Community. All vehicles of any kind and nature which are operated on the streets or alleys in the Community shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all Owners and Occupants.

*Section 11.09 Walking Trails.* Except as herein provided, the use of walking trails within the Community, if any, shall be regulated by the Board of Directors and used as foot paths only. Bicycles, roller blades, skateboards, go-carts, minibikes, scooters, or motorcycles, with or without electric motors, or similar wheeled means of transportation or recreation shall only be permitted on the paths in the Community where such use has been approved by the Board of Directors. Provided, however, this provision shall not prohibit the use of a path by any person with a disability by the use of a wheelchair or other necessary transportation device.

*Section 11.10 Firearms and Fireworks.* The display or discharge of firearms or fireworks on the Common Property is prohibited; provided, however, that the display of lawful firearms on Common Property is permitted by law enforcement officers; an Owner or Occupant protecting themselves and their property within the Dwelling Unit to the fullest extent permitted by law; and for the limited purpose of transporting firearms across Common Property to and from a Dwelling Unit. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types that are capable of launching a projectile of any sort, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A. Section 25-10-1.

*Section 11.11 Pets.* No Dwelling Unit Owner or Occupant may keep any pets other than generally recognized household pets on any portion of the Community; provided, however no Dwelling Unit Owner or Occupant may keep more than a total of two (2) cats and/or dogs per Dwelling Unit. Notwithstanding the above, a reasonable number of generally recognized household pets, as determined in the Board's sole discretion, weighing less than two (2) pounds each may be kept in Dwelling Units. No Dwelling Unit Owner or Occupant may keep, breed, or any maintain any pet for any commercial purpose. Pets may not be left unattended outdoors. No structure for the care, housing, or confinement of any pet shall be constructed or on maintained on any part of the Common Property or the Dwelling Unit without prior approval from the Architectural Control Committee. Dogs must be kept on a leash and be under the physical control of a responsible Person at all times while outdoors. Feces left upon the Common Property by dogs must be removed by the owner of the dog or the Person responsible for the dog. No venomous snakes, pit bulldogs, rottweilers, doberman pinschers, or other animals determined in the Board's sole discretion to be dangerous may be brought onto or kept in the Community at any time without the prior written consent of the Board of Directors. Such approval shall only be granted if the owner of the pet provides the Board of Directors with written evidence that the dog has been tested by the American Temperaments Test Society

(or other similar independent testing group that tests the temperament of specific dogs) and has been found to be of a temperament suitable for living in close proximity to other owners and occupants and their pets without endangering any of the above groups. No potbellied pigs or horses may be brought onto or kept in the Community at any time. The Board may require that any pet which, in the Board's opinion, endangers the health of any Dwelling Unit Owner or Occupant or creates a nuisance or unreasonable disturbance, be permanently removed from the Community upon seven (7) days written notice. If the Dwelling Unit Owner or Occupant fails to do so, the Board may institute legal action to remove the pet. Any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety, or property of any community member may be removed by the Board without prior notice to the pet's owner. Animal control authorities shall be permitted to enter the Community to patrol and remove pets that are not being kept in accordance with applicable local laws. Pets shall be registered, licensed, and inoculated as required by law. Any Dwelling Unit Owner or Occupant who keeps or any maintains any pet within the Community shall be deemed to have agreed to indemnify and hold the Association, its directors, Officers, and agents free and harmless from any loss, claim, or liability of any kind or character whatever arising by reason of keeping or in such pet within the Community.

*Section 11.12 Parking.* No Owner or Occupant may keep or bring onto the Community more than a reasonable number of vehicles per Dwelling Unit at any time, as determined by the Board. Vehicles permitted under this Section shall be parked in areas specified herein or in designated areas authorized in writing by the Board. Owners and Occupants are prohibited from parking on yard areas, along the roadways of the Community, or on any exterior parking space located on the Common Property for any period of time. Notwithstanding anything to the contrary stated herein, all exterior parking spaces located on the Common Property shall be reserved for guest parking; provided, however, a guest vehicle shall not be parked in a parking space reserved for guest parking for more than forty-eight (48) consecutive hours unless prior written consent of the Board is first obtained. Disabled and stored vehicles are prohibited from being parked on the Property except in the areas provided above. For purposes of this Section, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle of an Owner or Occupant shall be considered "stored" if it remains on the Community for fourteen (14) consecutive days or longer without prior written Board permission, and a vehicle of a guest shall be considered "stored" if it remains parked in a parking space reserved for guest parking for more than forty-eight (48) consecutive hours without prior written Board permission. Boats, boat trailers, trucks with a load capacity of one (1) ton or more, full-size vans (excluding mini-vans or utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), recreational vehicles (including RV's, four-wheelers, motor homes, etc.), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors other than vehicles of a sheriff, marshal, or police officer marked as such, are also prohibited from being parked in the Community for a period in excess of 24 hours, except in garages or other areas designated by the Board as parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans, commercial vehicles, and vehicles with commercial writings on their exteriors shall be allowed temporarily on the Common Property during normal business hours for the purpose of serving any Dwelling Unit or the Common Property; provided, that, without the written consent of the Board, no such vehicle shall be authorized to remain on the Common Property overnight or for any purpose unless serving a Dwelling Unit or the Common Property. If any vehicle is parked on any portion of the Property in violation of this Section or in violation of the Rules and Regulations, the Board or an agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed provided the notice shall include the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed or booted in accordance with the notice, without further notice to the Owner or user of the vehicle. If a vehicle is parked in a fire lane, is blocking another vehicle or access to a Dwelling Unit, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no

notice shall be required, and the Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. The Association's right to tow is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow. Notwithstanding anything to the contrary herein in this ARTICLE 11, Declarant and its agents, subcontractors and assigns shall have the right to park any and all vehicles, including commercial vehicles, on the streets in the Community, as may be designated by Declarant, in order to facilitate the construction, development and build-out of Dwelling Unit in the Community.

*Section 11.13 Junk Yards.* There shall be no junk yards or auto used parts storage on any Dwelling Unit, nor shall any Dwelling Unit be used for the purpose of an automobile workshop; nor shall any immobile or inoperable automobile be maintained upon any Dwelling Unit or upon any street in the Community.

*Section 11.14 Garages and Driveways.* Owners and Occupants are expected, wherever possible, to park their cars or other motor vehicles in their garages, on parking pads, in driveways, or in other areas designated by the ACC. When possible, all vehicles are to be parked inside enclosed garage areas, and when not possible, they shall be parked on the driveway area and not in the yard area. Garage doors should be kept closed whenever possible. All garages shall be maintained in such a manner that parking for the maximum number of motor vehicles for which they were originally designed to hold are allowed and possible. Driveways are to be kept clean and free from oil and fluid spill buildup. All driveways must be of concrete construction and shall be poured with a minimum thickness of four (4) inches. All driveways shall run from the pavement line of the street frontage of each Dwelling Unit.

*Section 11.15 Abandonment of Personal Property.* Personal property, except for the personal property owned by the Association, is prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property, or the right of way located within the Community, without prior written Board permission. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property or on the front door of the Owner's Dwelling Unit, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation. The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner; provided, however, that in such a case, the Board shall give the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed. Neither the Association nor any officer or agent thereof shall be liable to any person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

*Section 11.16 Signs.* Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected or placed by an Owner, Occupant or other Person, or permitted to remain on the Community without the prior written consent of the Board or its designee, except that one professional security sign not to exceed one (1) square foot may be displayed on a Dwelling Unit and one (1) professionally lettered "For Rent" or "For Sale" sign not to exceed six (6) square feet in size may be displayed on a Dwelling Unit being offered for sale or for lease. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. The Board also shall have the authority to adopt regulations permitting temporary signs on Dwelling Units announcing births, birthdays, or other events for limited periods of time. This Section shall not apply to Declarant.

*Section 11.17 Yard or Garage Sales.* No garage sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Community without prior written Board consent. If so permitted, any such activities shall be subject to all reasonable conditions that the Board may impose.

*Section 11.18 Rubbish Trash and Garbage.* All rubbish, trash, and garbage shall be regularly removed from the Dwelling Unit and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Property or outside the garage of a Dwelling Unit, temporarily or otherwise, earlier than 8:00 p.m. on the day before the scheduled garbage pickup in which event the containers for said garbage or trash may be left on the Common Property or outside the garage of the Dwelling Unit for a period not to exceed twenty-four (24) consecutive hours. Rubbish, trash, and garbage shall be disposed of in sealed bags and either placed in the trash dumpsters, or proper receptacles designated by the Board for collection, or removed from the Community. The Association may, but shall not be required to, contract with private trash and recycling collection companies to pick up all usual and customary household trash and recyclables on a regular basis.

*Section 11.19 Unsightly Conditions.* The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, shall not be pursued or undertaken on any part of the Community, except within a garage. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Dwelling Unit. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture, grills, and similar items may be kept outside of a Dwelling Unit.

*Section 11.20 Utility Lines.* Except as may be permitted by the ACC and any responsible governing or franchising authority, no overhead utility or cable television lines other than utility lines needed to supply power to homes, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

*Section 11.21 Energy Conservation Equipment.* No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on a Dwelling Unit unless they are approved by the ACC.

*Section 11.22 Antennas and Satellite Dishes.* Except as provided below and as provided for in the Design Guidelines, no satellite dish, antenna, or other device for the transmission or reception of television signals, radio signals, or any form of electromagnetic wave or radiation shall be erected, used, or maintained on any portion of the Community; provided, however, that the Association shall have the right to erect, construct, and maintain such devices. The following shall apply to all Owners:

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

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

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

In the event of a transfer of a Dwelling Unit that includes the satellite dish or antenna, the Grantee shall assume all responsibility for the satellite dish or antenna and shall comply with this Declaration, the Bylaws, and the Rules and Regulations regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dish or antenna. Notwithstanding any provision to the contrary contained herein, to the fullest extent permitted by law, no Owner shall erect a satellite dish allowed hereunder either in the front yard of a Dwelling Unit or attach the same to the front



portion of a Dwelling Unit if same or better quality signal can be achieved by attaching the satellite dish to the side or rear portion of a Dwelling Unit or erecting the satellite dish in the side or rear yard of the Dwelling Unit. Moreover, for so long as not prohibited by any FCC rule, no satellite dish, antenna, or other device for the transmission or reception of television signals, radio signals, or any form of electromagnetic wave or radiation shall be located on the front or side of any Dwelling Unit that is visible from the street or another Dwelling Unit.

*Section 11.23 Laundry.* No Owner, guest, or tenant shall hang laundry from any area within or outside a Dwelling Unit if such laundry is within the public view, or hang laundry in full public view to dry, such as on balcony, porch, deck, or terrace railings. No clotheslines, wires, of any like material or item shall be erected on any Dwelling Unit for the purpose of drying clothes or laundry of any type. This provision may, however, be temporarily waived by the Declarant or the Association during a period of severe energy shortage or other conditions where enforcement of this Section would create hardship.

*Section 11.24 Air Conditioning Units.* Except as may be permitted by written consent of the ACC, no window air conditioning units may be installed. Unless otherwise placed on a Dwelling Unit by Declarant, condensing units for air conditioners shall only be located in the rear or along the side of a Dwelling Unit and shall be screened so as to be concealed from view of neighboring Dwelling Units, Common Property and all streets that border the Dwelling Unit.

*Section 11.25 Holiday Decorations.* Holiday decorations may be displayed in windows of a Dwelling Unit only and during normal, customary seasons.

*Section 11.26 Mailboxes.* The Community will contain central mailbox area and/or mailbox kiosk area(s) as determined by the Board or as installed by Declarant.

*Section 11.27 Windows and Window Treatments.* The side of any window treatment that is visible from the outside of a Dwelling Unit shall be white or off-white in color. All windows of a Dwelling Unit must have permanent window treatments, and such window treatments must be of a type manufactured and commercially sold for the purpose of being used as window treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose. No sheets, towels, blankets of other like material shall be used as window treatments.

*Section 11.28 Recreational Equipment.* No recreational or playground equipment including, but not limited to, swing sets, jungle gyms, play houses, trampolines, tennis courts, and basketball stands and goals, soccer/hockey goals and nets (collectively, "Recreational Equipment"), shall be erected, constructed, or installed on any Dwelling Unit unless its location, design, and type are approved in writing by the ACC. This restriction shall not apply to Recreational Equipment removed at the end of each day. In addition, no Recreational Equipment is permitted in and on the roads within the Community at any time, and all Recreational Equipment must be stored inside the Dwelling Unit when not in use, except that Recreational Equipment may be kept in rear, fenced yards of a Dwelling Unit as long as the Recreational Equipment is not visible from the front of the Dwelling Unit or other view corridors as determined in the sole discretion of the ACC.

*Section 11.29 Artificial Vegetation, Exterior Sculpture, Exterior Statuary and Similar Items.* No artificial vegetation or plastic animal decorations, such as pink flamingos, etc., shall be permitted on the exterior of any Dwelling Unit. Exterior sculpture, statuary, foundations, bird baths, bird house, and similar items must be approved by the ACC, but in no event shall be located so as to be visible from the front of any Dwelling Unit or any adjoining street to said Dwelling Unit. No more than one bird bath shall be permitted on any Dwelling Unit and shall be located to the rear of the Dwelling Unit.

*Section 11.30 Motorcycles.* Motorcycles, motorbikes and like equipment and machinery maintained for the personal use of any Owner or member of the Owner's family may be garaged upon any Dwelling Unit and operated upon the public streets in the Community, but may not be operated in any location other than upon the Dwelling Unit owned by the person or persons maintaining such vehicle or permitting the same upon their Dwelling Unit in the Community, or upon the public streets of the Community.

*Section 11.31 Impairment of Easements.* An Owner shall do no act nor any work that will impair the structural soundness or integrity of any Dwelling Units or impair any easement or other interest in real property, nor do any act nor allow any condition to exist which will adversely affect the other Dwelling Units on their Owners or Occupants.

*Section 11.32 Lighting.* Except as may be permitted by the ACC, exterior lighting shall not be permitted except for (a) approved lighting as originally installed on a Dwelling Unit; and (b) illumination for all exterior lighting shall be generated from clear light bulbs or such other light bulbs specified by the Association.

*Section 11.33 National Flags.* Notwithstanding anything to the contrary herein, an Owner may display one (1) national flag of the United States not exceeding twelve (12) square feet in size on a flag holder located on the exterior of a Dwelling Unit; provided, however, no flag shall be displaced in a manner inconsistent with any provision of the Freedom to Display the American Flag Act of 2005, or any applicable law. By taking title to a Dwelling Unit, all Owners agree and acknowledge that the Board, on behalf of the Association, has a substantial interest in protecting the aesthetic appearance of the Community and therefore may adopt additional reasonable restrictions pertaining to the time, place, or manner of displaying the flag of the United States.

*Section 11.34 Gardens and Play Equipment.* No vegetation garden, hammock, statuary, play equipment (including, without limitation, basketball goals), or pool may be erected without the prior written approval of the ACC in accordance with the provisions of ARTICLE 10 of this Declaration.

*Section 11.35 Sale Period.* Notwithstanding any provisions contained in this Declaration to the contrary, during the period of the sale of Dwelling Units it shall be expressly permissible for Declarant, its contractors, agents, employees, assigns and representatives, to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the completion and sale of Dwelling Units, including, but without limitation, business offices, signs, model homes and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use the parking facilities in the Community for such purposes and to use the Dwelling Units owned by Declarant as model homes and as offices for the sale of the Dwelling Units and related activities.

*Section 11.36 Fences.* Other than fences constructed as part of the initial approved construction of the improvements on a Lot or as installed by Declarant or Approved Builder, no fence, fencing type barrier of any kind including fencing enclosures for pets shall be placed, erected, allowed, or maintained upon any portion of the Community without the prior written consent of the ACC, with the exception that underground electronic fencing shall be allowed. No Owner shall erect or place any fence on or along a common property line, where such property line abuts Common Property, except with the prior written consent of the ACC. No chain link or wire fence shall be erected on any portion of a Dwelling Unit. In deciding whether to permit a fence, the ACC shall consider whether the fence in the sole discretion of the ACC shall block or adversely affect views of other Owners and view corridors established by the Declarant in the development of the Community. The Association may develop additional rules, regulations and/or guidelines regarding fencing within the Community. Fencing placed on the boundary line of a Dwelling Unit shall require the prior written approval of the adjoining neighbor and the ACC (fencing which is not

placed directly on a boundary line shall not require the prior written approval of the adjoining neighbor). The ACC may deny fences backing up to other fences if the fence styles clash. All fences shall comply with any fence guidelines adopted by the ACC along with any zoning conditions for the Community. In addition, no one shall construct or install any fence, hedge or similar structure on any portion of the Community in such a location as would interfere with or obstruct access to utility meters or sewer cleanouts at the Community by any utility company or public works employees or agents. In the event of a violation of this provision, Declarant, the Association, or the affected utility company, shall be entitled to enter upon that portion of the Community and remove the fence, hedge, or other obstructions and recover all costs incurred from the Owner.

*Section 11.37 Tree Removal.* No trees located on a Lot having a caliper of five (5) inches or more (measured from a point two (2) feet above ground level) or a height of more than twenty (20) feet above the ground shall be removed without the prior written consent of the ACC, except for (i) diseased or dead trees; (ii) trees needing to be removed to promote the growth of other trees or for safety reasons; (iii) trees the main trunk of which are within ten (10) feet of the Dwelling Unit, driveway, or walkways constructed or to be constructed on a Lot; or (iv) any trees having a caliper of no more than three (3) inches which are planted by Declarant or Approved Builder or are planted pursuant to any zoning conditions applicable to the Community. Owners acknowledge that there may from time to time also be laws or restrictions on tree removal by the county in which the Community is located and/or governmental ordinances; in the event of any conflict between such laws or ordinances and this Declaration, the more restrictive provision shall apply. Owner shall provide the Board with documentation explaining why a tree meeting requirements (i) or (ii) needs to be removed (such as a letter from an arborist) prior to removing such tree. This provision shall not apply to the removal of trees by Declarant, Approved Builder, or the Association. Notwithstanding anything to the contrary stated in this Declaration, in the event a diseased or dead tree located on the Common Property that was originally planted by Declarant is removed by the Association, the Association shall replace such removed tree with one of the same species and similar size if reasonably available.

*Section 11.38 Drainage.* Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, storm drains or by installation of fencing. Declarant and the Association hereby reserve a perpetual easement across the entire Community for the purpose of altering drainage and water flow. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of the affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. Reseeding any grassed area in a side or rear yard damaged as the result of the exercise of these easement rights shall be deemed to be the reasonable repair of such damage. Lots in the Community may contain drainage swales that channel stormwater runoff. Owners and Occupants shall not interfere with such drainage swales or obstruct, direct or divert the flow of water onto a neighbor's property or in a manner which alters the overall drainage plan for the Lot except with the prior written consent of the ACC. Except for any fencing or landscaping installed by Declarant or Approved Builder, in no event shall any Owner or Occupant place or caused to be placed any fencing, landscaping or structures within any drainage swales within the Community without the prior written consent of the ACC.

*Section 11.39 Sight Distance at Intersections.* All property located at street intersections and at the intersections of streets and driveways shall be landscaped so as to permit safe sight across the corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem. The boundaries of each Dwelling Unit are as shown on the Survey recorded in the Official Records.

*Section 11.40 Outbuildings.* No structure of a temporary character, trailer, tent, shack, carport, storage structure, garage, barn, or other outbuilding shall be placed, erected, allowed or maintained by any Owner

or Occupant on any portion of the Community, other than by Declarant, so long as Declarant owns any property in the Community, at any time, either temporarily or permanently, without the written approval of the Board. Any sheds, tool storage areas, workshops or outbuildings approved by the Board must be consistent in design materials and color with the Dwelling Unit and must meet the Design Guidelines. Each Dwelling Unit shall be restricted to only one (1) outbuilding with the prior written consent of the ACC. No metal buildings will be allowed in the Community. In no event shall any trailers, campers, vehicles, tents, any garages (attached and detached), or other structures be used as a residence or living space in any manner whatsoever, either temporarily or permanently, within the Community, without the prior approval of the Board. Specifically, no garage, including, but not limited to, attached and detached garages, shall be utilized in any manner whatsoever as an additional living space or residence. However, this Section shall not be construed to prevent Declarant and those engaged in development, construction, marketing, property management or sales from using sheds, trailers, or other temporary structures for any of the foregoing purposes. In addition, nothing in this Declaration shall be construed to prevent Declarant from developing, constructing, marketing, or maintaining model homes or speculative housing within the Community. Any such structures described in this Section 11.40 must also comply with all applicable subdivision and zoning laws, regulations and conditions for the Community. The Association may develop additional rules, regulations and/or guidelines regarding outbuildings within the Community.

*Section 11.41 Swimming Pools.* No swimming pool shall be erected, constructed, or installed on any Lot.

*Section 11.42 Erosion Control and Contamination.* No activity which may create erosion or siltation problems in the Community shall be undertaken on any Lot without the prior written approval of the ACC or its designee, of plans and specifications for the prevention and control of such erosion or siltation. Such plans and specifications shall be designed by a professional engineer licensed in the State of Georgia and all costs and expenses related thereto shall be borne exclusively by the Owner(s) of such Lot. The ACC or its designee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include, by way of example and not of limitation, physical devices for controlling the run-off and drainage of water, special precautions in grading, clean-up activities and requiring landscaping as provided for herein. No activity which results in contamination of or any damage to any stream, water course or any other Lot shall be conducted on any Lot, and each Owner shall be liable for all resulting damages from such activity and for restoration of a property damaged from contamination resulting from or attributable to such activity. In addition, prior to commencing any improvements on a Lot, the Owner of such Lot and any builders, subcontractors, or other agents of such Owner, shall fulfill their obligations to comply with the requirements of the State of Georgia Department of Natural Resources, Environmental Protection Division, or any other governmental agency having jurisdiction thereof.

*Section 11.43 Stream Buffers.* Land-disturbing activities shall not be conducted closer to the banks of the any stream within the Community than is permitted by federal, state or local law or ordinances, as measured from the point where vegetation has been wrested by normal stream flow or as measured otherwise as may be required pursuant to applicable law or ordinance, except with prior written approval under Article 10 of this Declaration and compliance with Georgia law and all other applicable laws or ordinances, including, without limitation, the Control of Erosion and Sedimentation Act, O.C.G.A. Section 12-7-1, et seq., as amended from time to time. Any stream buffer areas existing at the time of the recording of the Survey are generally shown thereon.

*Section 11.44 Buffer and Improvement Setbacks.* The Community may contain one or more impervious surface setbacks, natural conservation areas, impervious stream setbacks, undisturbed buffers, zoning buffers, buffers for wetlands and/or undisturbed buffer areas, undisturbed natural vegetative buffer, flood zones, building setbacks, landscape setbacks, or similarly named areas, as may be shown on the Survey or

identified as zoning conditions affecting the Community. Any buffer areas shall exist as undisturbed natural buffer areas of existing vegetation. Owners shall not disturb any undisturbed buffer areas in any way, including, without limitation, the construction of any improvements in the undisturbed buffer, landscaping, or cutting of trees, bushes or other vegetation. No improvements may be erected within any impervious setback area. Owners are not allowed to maintain or trim the vegetation in any undisturbed buffer or impervious setback areas. The Association is allowed to maintain and trim the vegetation in any undisturbed buffer or impervious setback areas at the direction of the Board, but only in accordance with all applicable zoning and code requirements. Areas in and near the Community may contain creeks and streams which may be considered as "Jurisdictional Waters" by the US Army Corps of Engineers, intermittent streams and/or perennial streams. Neither the Association nor any Owner shall take any action in violation of any law pertaining to any Jurisdictional Waters in the Community. The governmental authorities having jurisdiction over such areas, include, but are not limited to, the Georgia Department of Natural Resources, the Georgia Environmental Protection Division and the county in which the Jurisdictional Waters are located.

*Section 11.45 Lot Coverage and Improvement Setbacks.* The Community contains building set back lines (including, but not limited to, zoning setbacks) and is subject to a maximum lot coverage restriction as shown on the Survey. Except as may be allowed under all applicable zoning and code requirements, Owners shall not construct any improvements encroaching on the building set back lines or in excess of the maximum lot coverage.

*Section 11.46 Wetlands, Creeks, and Streams.* Except as herein provided, any and all storm water retention or detention ponds, stormwater facilities, wetlands, creeks and streams within the Community shall be used for aesthetic amenities and storm water drainage only, no other use thereof, including, without limitation, swimming, ice skating, playing, or use of personal flotation devices, and other recreation, shall be permitted, without the written consent of the Board of Directors. The Association, Approved Builder, and/or the Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of storm water retention or detention ponds, stormwater facilities, wetlands, creeks, streams, or other areas of water within the Community. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, wastewater, rubbish, debris, ashes or other refuse in any storm water retention or detention ponds, stormwater facilities, wetlands, creeks or streams within the Community, or any other Common Property. Applicable governmental agencies, the Declarant and the Association, shall have the sole right to control the water level of any and all other bodies of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any storm water retention or detention ponds, stormwater facilities, wetlands, creeks and streams within the Community. The Community may contain dry ponds and any detention and retention areas, stormwater facilities, and water areas within the Community may be empty of water, muddy and/or dry for extended periods of time. Declarant makes no representations regarding the water levels of any water areas within the Community. Owners shall have no riparian or littoral rights with respect to the waters in any storm water retention or detention pond, stormwater facilities, wetlands, creek or stream within the Community and shall not be permitted to withdraw water from any storm water retention or detention pond, stormwater facilities, wetlands, creek or stream as may exist in the Community without the prior written consent of the Board of Directors.

*Section 11.47 Decks, Patios, and Porches.* No laundry, garments, towels or objects other than potted plants, grills and patio furniture, shall be placed on a deck, patio, or porch, except as may be authorized by the Board of Directors or as originally installed by Declarant or Approved Builder. Notwithstanding the foregoing, patio furniture made of plastic or lightweight material shall not be placed on a front porch or rooftop patio where it could blow away during periods of high winds. No outdoor fires shall be started except on a rooftop patio in a fire pit or fire container designed to safely contain an outdoor fire and provided further that the fire pit or container not be larger than thirty-six inches (36") in diameter, except for any fire

pit or container originally installed by Declarant or Approved Builder. No such outdoor fire pits or fire containers shall be installed without the prior written consent of the ACC, except for those fire pits and fire containers originally installed by Declarant or Approved Builder. No charcoal grills, or hot tubs are permitted on any a deck, patio, or porch of a Dwelling Unit or on any Common Property in the Community. In addition, objects shall not be permitted to hang over or be attached to any deck, patio or porch or to otherwise protrude outside of the vertical plane formed by the exterior surface of a deck, patio or porch. No deck, patio or porch shall be enclosed without prior approval in accordance with the provisions of Article 10 of this Declaration. Any outdoor home theater, speakers and/or sound systems on any open balcony, window, roof, deck, or porch which can be heard from any neighboring Dwelling Unit are prohibited. Gas grills and smokers may be placed on a rooftop patio subject to all local laws, codes and regulations and any rules and regulations adopted by the Board of Directors.

*Section 11.48 Entry Features.* Owners shall not alter, remove or add improvements to any entry features or streetscapes constructed on any Lot in connection with the original development of the Community, or any part of any easement area associated therewith without prior approval in accordance with the provisions of Article 10 of this Declaration.

## ARTICLE 12 LEASING

*Section 12.01 Leasing.* In order to carry out the purpose for which the Community 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 apartment complex, the leasing of a Dwelling Unit shall be prohibited except as otherwise provided in this Article.

*Section 12.02 Purpose.* The Board shall have the power to make and enforce reasonable Rules and Regulations and to fine, in accordance with this Declaration and the Bylaws, in order to enforce the provisions of this Article.

*Section 12.03 Leasing Provisions.* Leasing of a Dwelling Unit shall be governed by the following provisions:

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

(b) *Leasing Permits.* An Owner's request for a Leasing Permit shall be approved if current outstanding Leasing Permits have not been issued for more than twenty-five percent (25%) of the total number of Dwelling Units (excluding Dwelling Units owned by Declarant) in the Community. A Leasing Permit shall be automatically revoked upon the happening of any of the following events: (i) the sale or transfer of the Dwelling Unit to a third party (excluding sales or transfers to: (A) an Owner's spouse; (B) a person cohabitating with the Owner; and (C) a corporation, partnership, company, or legal entity in which the Owner is a principal); (ii) the failure of an Owner to lease his or her Dwelling Unit within one hundred eighty (180) days of the Leasing Permit having been issued; (iii) the failure of an Owner to have his or her Dwelling Unit leased for any consecutive one hundred eight (180) day period thereafter; or (iv) the occurrence of the date

referenced in a written notification by the Owner to the Association that the Owner will, as of said date, no longer need the Leasing Permit. If current Leasing Permits have been issued for more than twenty-five percent (25%) of the total number of Dwelling Units (excluding Dwelling Units owned by Declarant), no additional Leasing Permits shall be issued (except for Hardship Leasing Permits) until the number of outstanding current Leasing Permits falls below twenty-five percent (25%) of the total number of Dwelling Units (excluding Dwelling Units owned by Declarant) in the Community. Owners who have been denied a Leasing Permit shall automatically be placed on a waiting list for a Leasing Permit and shall be issued the same if they so desire when the number of current outstanding Leasing Permits issued falls to twenty-five percent (25%) or less of the total number of Dwelling Units (excluding Dwelling Units owned by Declarant) in the Community. An Owner who has been placed on the waiting list for a Leasing Permit may not transfer or assign Owner's position on the waiting list. The Board may remove an Owner from the waiting list of the Owner is more than thirty (30) days delinquent in the payment of any assessments, fines, or other charges owed to the Association or if the Owner or the Owner's Permittee violate the Governing Documents of the Community in a non-monetary manner. The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the waiting list for a Leasing Permit.

(c) *Hardship Leasing Permits.* If the denial of the lease by the Board will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a Hardship Leasing Permit. The Board of Directors shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion after considering the following factors: (i) the nature, degree, and likely duration of the hardship, (ii) the harm, if any, which will result to the Community if the permit is approved, (iii) the number of Hardship Leasing Permits which have been issued to other Owners, (iv) the Owner's ability to cure the hardship, and (v) whether previous Hardship Leasing Permits have been issued to the Owner. A "hardship" as described herein shall include, but not be limited to the following situations: (A) an Owner must relocate his or her residence outside the greater Murray County, Georgia area and cannot, within six (6) months from the date that the Dwelling Unit was placed on the market, sell the Dwelling Unit except at a price below the current appraised market value, after having made reasonable efforts to do so; (B) where the Owner dies and the Dwelling Unit is being administered by his or her estate; and (C) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Dwelling Unit. Hardship Leasing Permits shall be valid for a term not to exceed one (1) year. Owners may apply for additional Hardship Leasing Permits. Hardship Leasing Permits shall be automatically revoked if during the term of the permit, the Owner is approved for and receives a Leasing Permit. The Hardship Leasing Permit shall also be revoked for such non-monetary violation if the Board so determines after a hearing, or upon the last day of the Owner's right to request a hearing if the Owner fails to request a hearing. In no event shall the total number of Hardship Leasing Permits in the Community be more than ten percent (10%) of the total number of Dwelling Units within the Community.

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

(i) *Notice.* At least seven (7) days prior to entering into the lease of a Dwelling 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 Governing Documents.

(ii) *General.* A Dwelling Unit may be leased only in its entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form that is deemed

acceptable. There shall be no subleasing of a Dwelling Unit or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than six (6) months, 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 Dwelling 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 Dwelling Unit. The Owner must provide the lessee with a copy of the Governing Documents. 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.

(iii) *Liability for Assessments, Use of Common Property, and Compliance with the Governing Documents.* Each Owner covenants and agrees that any lease of a Dwelling 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 Dwelling Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

A. *Compliance with the Governing Documents.* The lessee shall comply with all provisions of the Governing Documents and shall control the conduct of all other Occupants and guests of the leased Dwelling Unit in order to ensure such compliance. The Owner shall cause all Occupants of his or her Dwelling Unit to comply with the Governing Documents and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Dwelling Unit are fully liable and may be sanctioned for any such violation. If the lessee, or a person living with the lessee, violates this Declaration, Bylaws, or Rules and Regulations 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 ARTICLE 5 of the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Dwelling Unit. Any violation of the Governing Documents by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with the Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Governing Documents, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs associated with the eviction shall be assessment and lien against the Dwelling Unit.

B. *Use of Common Property.* The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property and other amenities.

C. *Liability for Assessments.* When an Owner who is leasing his or her Dwelling 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, 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 this 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.

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

*Section 12.04 Applicability of this Article.* Notwithstanding the above, this Article shall not apply to any leasing transaction entered into by Declarant (regardless of whether said lease is entered into prior to or after the expiration of Declarant's right to appoint and remove Officers and directors of the Association pursuant to Section 3.01(b) of the Bylaws), the Association, or the holder of any first Mortgage on a Dwelling Unit who becomes the Owner of a Dwelling Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage. Such parties shall be permitted to lease a Dwelling Unit without first obtaining a permit in accordance with this Article, and such Dwelling Unit shall not be considered as being leased in determining the maximum number of Dwelling Units that may be leased in accordance with this Article.

#### ARTICLE 13 SALE OF DWELLING UNITS.

*Section 13.01 Dwelling Unit Sales.* A Dwelling Unit Owner intending to make a transfer or sale of a Dwelling Unit or any interest in a Dwelling Unit shall give the Board written notice of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish the Board, as part of the notice, the name and address of the intended grantee, and such other information as the Board may reasonably require. This Article shall not be construed to create a right of first refusal in the Association or in any third party. In addition, the purchase agreement or transfer documents shall attach a copy of this Declaration and the Bylaws. Within seven (7) days after receiving title to a Dwelling Unit, the purchaser of the Dwelling Unit shall give the Board written notice of his or her ownership of the Dwelling Unit. Upon failure of an Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Dwelling Unit and Owner thereof and assess the Owner for all costs incurred by the Association in determining his or her identity.

#### ARTICLE 14 MAINTENANCE RESPONSIBILITY.

*Section 14.01 Party Walls.* Each wall or fence which shall serve and separate any two (2) adjoining Dwelling Units shall constitute a party wall or fence and, to the extent not inconsistent

with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. 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 any Owner who has benefited by the wall or fence may restore it, and the Owner who is benefited by the wall or shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner 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 Section 14.01 shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

*Section 14.02 Dwelling Unit Maintenance.*

- (a) Maintenance by the Association of exterior portions of Dwelling Units shall include the following:
- (i) exterior surfaces of garage doors;
  - (ii) all roofs, downspouts, and gutters;
  - (iii) all exterior building surfaces with the exception of hardware and glass; provided, however, the Association shall not be responsible for waterproofing foundations either above or below grade; and
  - (iv) all driveways.
- (b) Association shall not be responsible for maintaining and keeping in good repair the following:
- (i) walkways, steps, decks (whether enclosed or not) and deck surfaces, patios (whether enclosed or not) and patio surfaces and landscaping within the patios, planters, and courtyards, if any, of the Dwelling Units;
  - (ii) HVAC or similar equipment located outside the Dwelling Units;
  - (iii) all doors, including screen and storm doors, hinges, frames and door frames and hardware which are part of the entry system;
  - (iv) hose bibs contained in exterior walls of Dwelling Unit;
  - (v) lighting fixtures pertaining to a particular Dwelling Unit and being located outside an entryway or in a garage;
  - (vi) window screens, window frames and glass;
  - (vii) foundations and footings, including waterproofing; and
  - (viii) pipes which serve only one (1) Dwelling Unit whether located within or outside of the Dwelling Unit's boundaries.
- (c) The Board of Directors may promulgate rules setting forth the extent of maintenance to be performed by the Association and may assume responsibility for providing additional maintenance as long as Dwelling Units have equal rights to maintenance. The Board of Directors may authorize the officers of the Association to enter into contracts with any Person or Persons to perform maintenance hereunder on behalf of the Association.

*Section 14.03 Association's Responsibility-Common Property.* The Association shall maintain and keep in good repair the Area of Common Responsibility. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements located on the Area of Common Responsibility. Specifically, but not by way of limitation, the Association shall maintain the following:

- (a) all storm water detention or retention ponds and storm water drainage system, if and to the extent such ponds and storm water drainage systems are not maintained on an ongoing basis by a local governmental entity;

- (b) all drainage and detention areas which were originally maintained by the Declarant, to the extent such areas are not maintained on an ongoing basis by a local governmental entity;
- (c) all entry features for the Community including any irrigation system and the expenses for water and electricity, if any, provided to all such entry features;
- (d) all roadways within the Community, if and to the extent such roadways are not maintained on an ongoing basis by a local governmental entity;
- (e) all street signs within the Community to the extent any such signs are not maintained on an ongoing basis by a local governmental entity;
- (f) any central mailbox areas and mailbox kiosks within the Community;
- (g) any Community fencing (as determined by the Board) which is located on the Lots;
- (h) all cul-de-sac islands located within the Community; and
- (i) the maintenance of the landscaping for a Dwelling Unit limited to the following, which maintenance shall be performed on a schedule to be determined by the Board of Directors: (i) applying fertilizer and weed repellant on the lawns for a Dwelling Unit; (ii) mowing, edging, and clipping the lawns; and (iii) pruning and trimming the trees, hedges, and shrubbery. Notwithstanding the foregoing, the Association shall not be responsible for maintaining any landscaping installed on a Dwelling Unit by its Owner (with the approval of the ACC in accordance with Section 10.01 of this Declaration), removing dead plant material from a Dwelling Unit, or replacing any dead lawn or landscaping located on a Dwelling Unit.

*Section 14.02 Standards for Repair.* The foregoing maintenance shall be performed consistent with the Community-Wide Standard and as a Common Expense of the Association. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or outside the Community, where the Board has determined that such maintenance would benefit all Owners. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered and paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Dwelling Unit of such Owner. The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Dwelling Unit, or any other person, or resulting from any utility, rain, snow, or ice that may leak or flow from any portion of the Area of Common Responsibility or from any pipe, drain, conduit, appliance, or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Dwelling Unit or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section, which such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order to directive of any municipal or other governmental authority. The Association shall repair incidental damage to any Dwelling Unit resulting from performance of work that is the responsibility of the Association. Repairs to improvements on a Dwelling Unit shall be completed only to the extent of being "paint-ready." Such repair and subsequent cleaning shall be performed based on a reasonableness standard and at the sole discretion of the Board of Directors. In performing its responsibilities hereunder, the Association shall have the authority to delegate to a third-party Person such duties as are approved by the Board of Directors. In the

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

*Section 14.03 Owner's Responsibility.* Except as provided in Section 14.02 above, all maintenance of the Dwelling Unit shall be the sole responsibility of the Owner thereof. Such maintenance shall include, without limitation (a) repairing and painting and otherwise caring for the Dwelling Unit and (b) all pipes, lines, ducts, conduits, or other apparatus which serve only the Dwelling Unit located within the Dwelling Unit or, if located outside the Dwelling Unit, the portion of the pipe from the cutoff valve serving the Dwelling Unit (including all gas, electricity, water, sewer and air conditioning pipes, lines, ducts, conduits and other apparatus and the cut off valves for same serving only the Dwelling Unit). All such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto. Any maintenance that involves an exterior change, including, without limitation, landscaping and planting or repainting of the exterior of improvements in a different color, shall require prior approval of the ACC in accordance with the provisions of ARTICLE 10 of this Declaration. Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Property by an Owner or Occupant which is the responsibility of Association hereunder (including, but not limited to, landscaping of Common Property) shall be performed at the sole expense and risk of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair. In addition, each Owner also shall be obligated to:

(a) Perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Dwelling Units.

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

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

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

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

Occupant of the Dwelling Unit on which such personal property is located as requested by the Association or its agents and employees.

*Section 14.04 Failure to Maintain.* If the Board of Directors determines that: (a) any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair or replacement of items of which he or she is responsible hereunder; or (b) that the need for maintenance, repair, or replacement which is in the Area of Common Responsibility is caused through the willful or negligent act of any Owner, his or her family, guests, lessees, or invitees, and is not covered or paid by insurance, in whole or in part, then, except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at the Owner's costs and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. In the case of (a) above where the Owner has not discharged his or her responsibility, unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair and diligently pursue completion thereof within ten (10) days. If the Board determines that an emergency exists or that an Owner has not complied with the demand given by the Association as herein provided, or that the need for maintenance or repair is in the Area of Common Responsibility as in the case of (b) above, then the Association may provide any such maintenance, repair or replacement at the Owner's sole costs and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be a lien against the Dwelling Unit, and shall be collected as provided herein for the collection of assessments.

*Section 14.05 Measures Related to Insurance Coverage.*

(a) The Board of Directors, upon resolution, shall have the authority to require all or any Owner(s) to do any act or perform any work involving portions of the Community which are the maintenance responsibility of the Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage to the Community, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage.

(b) In addition to, and not in limitation of, any other rights the Association may have, if any Owner does not comply with any reasonable requirement made by the Board of Directors pursuant to Section 14.05(a) above, the Association, upon fifteen (15) days written notice (during which period the Owner may perform the required act or work without further liability), may perform such required act or work at the Owner's sole cost and expense. Such cost shall be specifically assessed against the Owner and shall be added to and become a part of the assessment obligation of such Owner and shall become a lien against the Dwelling Unit and shall be collected in the manner provided for collection of assessments. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to this Section 14.05(b), including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Dwelling Unit, except that access may be had at any time without notice in an emergency situation.

*Section 14.06 Maintenance Standards and Interpretation.* The maintenance standards and the enforcement thereof and the interpretation of the maintenance obligations under this Declaration may vary as the composition of the Board of Directors changes. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Article. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

*Section 14.07 Conveyance of Common Property by Declarant to Association.* Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall be Common Property to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

*Section 14.08 Removal of Improvements on Common Property by Declarant.* So long as Declarant owns any property in the Community, Declarant shall have the right, privilege, and option from time to time to remove, add, reconfigure, relocate, modify, and alter any and all improvements located on the Common Property.

#### ARTICLE 15 MORTGAGEE'S RIGHTS.

*Section 15.01 Approval of Action.* Unless two-thirds (2/3) of the first Mortgagees or Owners other than Declarant give their consent, the Association shall not:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this Section other than personal property of the Association);
- (b) change the method of determining the obligation, assessment, dues, or other charges which may be levied against an Owner;
- (c) by act or omission change, waiver, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Dwelling Units and of the Common Property (The issuance and amendment of architectural standards, procedures, rules, and regulations or use restriction shall not constitute a change, waiver, or abandonment within the meaning of this Section);
- (d) fail to maintain insurance, as required by this Declaration; or
- (e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

*Section 15.02 Notices of Action.* The following provisions are for the benefits of Eligible Mortgage Holders. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein. An Eligible Mortgage 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 Dwelling Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder;
- (b) any delinquency in the payment of assessments or charged owed by an Owner of a Dwelling Unit subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days and any default in the performance by an Owner of a Dwelling Unit of any obligation under this Declaration or Bylaws of the Association which is not cured within sixty (60) days;
- (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) any proposed action which would require the consent of a specified percentage of Eligible Mortgage holders.

*Section 15.03 Liability for Common Expenses.* Where the Mortgagee holding a first Mortgage of record or other purchaser of a Dwelling Unit obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Dwelling Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Dwelling Units, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title.

*Section 15.04 Rights to First Mortgagees.* First Mortgagees, after written notice to the Association, may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

*Section 15.05 Leasing Rights.* Notwithstanding anything to the contrary herein contained, the provisions of ARTICLE 12 governing leasing and ARTICLE 13 governing the sales of Dwelling Units, shall not apply to impair the right of any first Mortgagee to: (a) foreclose or take title to a Dwelling Unit pursuant to remedies contained in its Mortgage; or (b) take a deed or assignment in lieu of foreclosure; or (c) sell, lease, or otherwise dispose of a Dwelling Unit acquired by the Mortgagee.

*Section 15.06 No Priority.* No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Dwelling Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

*Section 15.07 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 Dwelling Unit.

*Section 15.08 Amendments by the Board.* Should Fannie Mac, Freddie Mac, HUD, FHA, the VA, any Institutional Mortgagee, or any other government-sponsored or owned entity that purchases, guarantees, and/or insures loans for the Dwelling Units that are subject to this Declaration, subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

*Section 15.09 Applicability of this Article.* Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the Bylaws, or Georgia law for any of the acts set out in this Article.

*Section 15.10 Failure of Mortgagee to Respond.* Any Mortgagee or Eligible Mortgage Holder 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 or Eligible Mortgage Holder within sixty (60) days of the date the Mortgagee or Eligible Mortgage Holder receives the Association's request.

## ARTICLE 16 EASEMENTS.

*Section 16.01 Easements for Encroachment and Overhang.* There is hereby reserved to the Declarant for the benefit of each Dwelling Unit a reciprocal appurtenant easement for encroachment and overhang between adjacent Dwelling Units and between Dwelling Unit and adjacent Common

Property due to the original construction or the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than two (2) feet, as measured from any point on such common boundary; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association, other than the Declarant in the original construction of the Dwelling Units. In addition, should a Dwelling Unit owned by Declarant or Approved Builder require a variance to correct a set-back violation during the Declarant Control Period, all adjacent Owner(s) to such Dwelling Unit agree to all governmental approvals necessary for such variance and in no way shall such adjacent Dwelling Unit Owner(s) oppose or prevent or delay the approval of such variance. If requested by the Declarant or Approved Builder, the adjacent Owner(s) shall write a letter of support in favor of granting the variance.

*Section 16.02 Easements for Driveway Encroachment.* There is hereby reserved appurtenant easements for encroachment as between each Dwelling Unit and such portion or portions of the driveway serving an adjacent Dwelling Unit due to the placement or settling or shifting of the driveway constructed, reconstructed, or altered thereon, to a distance of not more than two (2) feet, as measured from any point on the common boundary between adjacent Dwelling Units along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner or Occupant after the initial construction of improvements by Declarant.

*Section 16.03 Easement for Utilities – Dwelling Unit Owner.* Declarant hereby establishes for the benefit of each Dwelling Unit a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cable, conduits, utility lines, flues and ducts serving such Dwelling Unit and situated in, on or under any Dwelling Unit or the Property. 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 through, or over the Dwelling Units or the Common Property as may be reasonably necessary to or desirable. In the event that any Owner desires access to another Dwelling 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 Dwelling 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 of access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a Dwelling 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 Dwelling Units, reasonable steps shall be taken to protect such Dwelling 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.

*Section 16.04 Easements for Use and Enjoyment.*

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

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



(ii) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the Common Property in the Community for any period during which any assessment against his or her Dwelling Unit which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Governing Documents;

(iii) the right of the Association to borrow money as may be set forth in the Bylaws; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for any Dwelling Unit or Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Dwelling Unit or other property located within the Community (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any Dwelling Unit or Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Dwelling Unit or other property located within the Community);

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

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

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

*Section 16.05 Easements for Street Lights.* There is reserved to Declarant, and the Association, blanket easements upon, across, above and under all Dwelling Units on the Community for access, ingress, egress, installation, repairing, replacing and maintaining all utilities and services, including, but not limited to any irrigation system and all street lights serving the Common Property, and reading meters for: (a) all utilities serving the Community or any portion of the Common Property, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, (b) water runoff and storm drainage systems, (c) street lights, and (d) any other services such as, but not limited to, a master television antenna system, cable television system, master satellite system or security system which may be installed to serve the Community. It shall be expressly permissible for Declaration, the Association, or the designee of either, to do or to authorize the installation, repairing, replacing, and maintaining of the wires, conduits, cables, bulbs, and other equipment related to providing any such utility or service. Should a party furnishing any such utility or service request a specific license or easement by separate recordable document, Declarant or Board, as applicable, shall have the right to grant such easement. It shall also be expressly permissible for any agent or employee of any utility company to enter onto a Dwelling Unit to read any utility meter. In the event a meter on a Dwelling Unit is in a gated or fenced in area, such area shall be universally keyed for the utility company(ies) or at the request of the Association, such Owner shall provide the Association with a key to such area, to be used by the utility company. Neither Declarant nor the Association shall be liable for any

loss or damage due to its holding such key or use of such key for the purposes described above and each Owner shall indemnify and hold harmless Declarant, the Association and its Officers and directors against any and all expenses, including attorney's fees reasonably incurred by or imposed upon Declarant, the Association or its Officers or directors in connection with any action, suit or other proceeding (including settlement of such action, suit or proceeding) brought by the Owner or the Owner's family lessees, tenants, guests, employees, invitees or licensees against Declarant, the Association, its Officers or directors, arising out of or relating to its holdings or use of such key for the purposes described above.

*Section 16.06 Easement for Emergency Entry.* The Association shall have the right, but not the obligation, to enter upon any Dwelling Unit for emergency, security, and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, the Bylaws, and rules, which right may be exercised by any member of the Board, the officers, agents, employees, and managers of the Association and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Dwelling Unit to cure any condition which may increase the possibility of a fire or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association but shall not authorize entry into the interior living space of any Dwelling Unit without permission of the Owner.

*Section 16.07 Declarant Easements.* For so long as Declarant owns any Dwelling Unit primarily for the purpose of sale, Declarant and its duly authorized contractors, subcontractors, representatives, agents, associates, employees, tenants and successors and assigns shall have: (i) a non-exclusive easement for access and ingress to, egress from and use of the Common Property for the placement and maintenance of signs, banners, balloons, decorations marketing materials and tables, a sales office, a leasing office, a business office, promotional facilities and model Dwelling Units on any portion of the Community, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development, sale or lease of any Dwelling Unit ; (ii) a non-exclusive easement to use the Common Property for special events and promotional activities; and (iii) a transferable, non-exclusive easement on, over, through, under and across the Common Property for the purpose of making improvements on the Community or any portion thereof, for the purpose of constructing, installing, replacing, repairing, restoring and maintaining all utilities, buildings, driveways, landscaping and any other improvements on the Community property or serving the Community, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

*Section 16.08 Easement for Association Maintenance.* Declarant hereby grants to the Association a perpetual easement across all Dwelling Units as may be reasonably necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Dwelling Units, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole expense. Except in an emergency situation, entry to the interior of a Dwelling Unit shall only be during reasonable hours and after notice to the Owner.

*Section 16.09 Easement for Dwelling Unit Maintenance.* Declarant hereby reserves for the benefit of each Dwelling Unit reciprocal appurtenant easements between adjacent Dwelling Units for the purpose of maintaining or repairing the improvements located on each Dwelling Unit which easement shall extend to a distance of five (5) feet as measured from any point on the common boundary between the Dwelling Units. The easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner exercising this easement right shall be liable for the prompt

repair of any damage to the Dwelling Unit over which this easement is exercised which arises out of such maintenance or repair work.

*Section 16.10 Easement for Drainage.* There is hereby reserved by the Declarant and Approved Builder and granted to the Association an easement upon, across, above and under all storm water drainage easement areas as shown on the Survey for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining the storm water drainage system and related facilities serving the Community or any portion thereof (but without obligation on the part of Declarant or Approved Builder). Areas of storm drainage piping and retention or detention ponds within the Community may be maintained by governmental entities and such governmental entities may have easements over, across and under such areas. Surveys may also contain areas for access and access easements to such drainage, detention and retention areas and such access areas are for maintenance and emergency use only. This easement shall include the right (but not obligation on the part of Declarant or Approved Builder) to construct and maintain catch basins, retention or detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill, except as otherwise handled by governmental entities. In addition, there is hereby reserved to the Declarant and Approved Builder and granted to the Association a blanket easement across all Lots for creating and maintaining satisfactory drainage in the Community (but without obligation on the part of Declarant); provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the Dwelling Unit structure. It is anticipated that increased storm water run-off across downstream Lots will result from the construction of impervious surface in the Community. Neither the Declarant, Approved Builder, the Association nor any builder or Owner constructing according to plans and specifications approved or deemed approved under Article 10 of this Declaration shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from such construction.

*Section 16.11 Easement for Private Streets, 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 within the Property. 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 successor 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 Property, the perpetual nonexclusive right and easement upon, over and across those utility easement areas and private streets and roads for the installation, maintenance and use of such streets and roads, sidewalks, traffic directional signs, grading for proper drainage of said streets and roads, and related activities and improvements.

*Section 16.12 Easement for Entry Features and Street Signs.* There is hereby reserved to Declarant, the Association, and the designee of either, an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of entry features and street signs for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and the right to grade the land under and around the entry features.

*Section 16.13 Easements for Lake and Pond Maintenance and Flood Water.* Declarant reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement, but not the obligation, to enter upon bodies of water and any wetlands located within the Area of Common Responsibility to (i) install, operate, maintain, and replace pumps to supply irrigation water to the Area of

Common Responsibility; (ii) construct, maintain, and repair structures and equipment used for retaining water; and (iii) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns, and designees shall have an access easement over and across any of the Community abutting or containing bodies of water or wetlands to the extent necessary to exercise their rights under this Section 16.13. Declarant further reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over common areas and Lots (but not the Dwelling Units thereon) adjacent to or within one hundred feet (100') of bodies of water and wetlands within the Community, in order to (iv) temporary flood and back water upon and maintain water over such portions of the Community; (v) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (vi) maintain and landscape the slopes and bank pertaining to such area. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

*Section 16.14 Public in General.* The easements and rights created in this Article do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, that nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the Official Records. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Community), all or any portion of the Community which, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

#### **ARTICLE 17 ANNEXATION AND WITHDRAWAL OF PROPERTY.**

*Section 17.01 Annexation of Property.* Subject to the consent of the Owner and the consent of Declarant (for so long as Declarant owns any property for development and/or sale within the Community) upon the affirmative vote, or written consent, or any combination thereof, of Owners holding a Majority of the Total Association Vote, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Official Records a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided in the Supplementary Declaration.

*Section 17.02 Withdrawal of Property.* For so long as Declarant owns any property for development and/or sale within the Community, Declarant reserves the right to amend this Declaration at any time for the purpose of removing certain portions of the Community then owned by Declarant or its affiliates from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community desired to be effected by Declarant.

*Section 17.03 Additional Covenants and Easements.* Declarant, without further assent or permit, may unilaterally extend the scheme of this Declaration to other real property or additional Dwelling Units by filing for record or Supplementary Declaration in respect to the property or additional Dwelling Units to be subjected to this Declaration. Such additional covenants and easements shall be set forth in an amendment to this Declaration filed either concurrent with or after the annexation of the subject property and shall require the written consent of the owner(s) of such property, if other than Declarant.

*Section 17.04 Creation of Additional Neighborhoods and Annexation of Property to this Declaration.* Declarant reserves the unilateral right, but not necessarily the obligation, to (i) create additional neighborhoods on all or any portion of the property described in Exhibit "B" attached hereto and incorporated herein, which neighborhoods may be organized as one or more associations, and (ii) to subject said property and neighborhood(s) to the terms of this Declaration.

## ARTICLE 18 DECLARANT'S RIGHTS

*Section 18.01 Transfer of Declarant's Rights.* Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or in the Bylaws, as applicable. Furthermore, no such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Official Records.

*Section 18.02 Construction and Sale Period.* Notwithstanding any provision contained in the Governing Documents, for so long as Declarant owns any property for development and/or sale within the Community, Declarant reserves an easement across all property in the Community for Declarant to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's development, construction, and sales activities related to the Property, including, but without limitation:

- (a) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Dwelling Unit;
- (b) the right to tie into any portion of the Community with driveways, parking areas and walkways;
- (c) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device that provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community;
- (d) the right to grant easements over, under, in or on the Community, including, without limitation, the Dwelling Units, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer drainage lines and facilities constructed or installed in, on, under and/or over the Community;
- (e) the right to carry on sales and promotional activities in the Community;
- (f) the right to erect and maintain signs;
- (g) the right to use parking spaces located on the Common Property; and
- (h) the right to construct and operate business offices, construction trailers, model Dwelling Units, and sales offices. Declarant may use Dwelling Units, offices, or other buildings owned or leased by Declarant as model Dwelling Units and sales offices.

*Section 18.03 Protection of Property.* Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended with Declarant's express written consent until Declarant's rights hereunder have terminated as hereinabove provided.

## ARTICLE 19 AMENDMENTS.

*Section 19.01 Procedure.* Except where a higher vote is required for action under any other provision of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding a majority of the Total Association Vote. Furthermore, until one hundred percent (100%) of the Community has been developed and conveyed to Owners (other than Declarant) in the normal course of development and sale, Declarant may unilaterally amend this Declaration for any other purposes. Notwithstanding the foregoing provisions, any such amendment shall not materially adversely affect the substantive rights of any Owner, nor shall it adversely affect title to any Dwelling Unit without the consent of the affected Owner. Furthermore, until one hundred percent (100%) of the Community has been developed and conveyed to Owners (other than Declarant) in the normal course of development and sale, any amendment to this Declaration shall require the written consent of Declarant.

*Section 19.02 Notice of Amendment.* Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Official Records.

*Section 19.03 Rights of Eligible Mortgage Holders.* In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Dwelling Units that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage holder fails to submit a response to any written proposal for an amendment within sixty (60) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested. Material amendments are those that establish, provide for, govern, or regulate any of the following:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair, and replacement of the Common Property;
- (d) Insurance or fidelity bonds;
- (e) Rights to use of the Common Property;
- (f) Responsibility for maintenance and repair of the Common Property;
- (g) Leasing of Dwelling Units;
- (h) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Dwelling Unit;
- (i) Establishment of self-management by the Association where professional management has been required by any of the agencies or corporations set forth below; and
- (j) Amendment of any provisions that are for the express benefit of Eligible Mortgage Holders or insurers or guarantors of first Mortgages on Dwelling Units.

*Section 19.04 Right to Correct Errors or Bring in Compliance with Regulations.* Notwithstanding anything to the contrary stated in this Declaration, Declarant or the Board of Directors if Declarant does not own any Dwelling Units in the Community, without the necessity of a vote from the Owners, may unilaterally amend this Declaration to: (a) correct any scrivener's errors; (b) bring any provision of this Declaration into compliance with any applicable governmental statute, rule, regulation, judicial determination or rules and regulations of Fannie Mae, Freddie Mac, HUD, FHA, the VA, any Institutional Mortgagee, or any other government-sponsored or owned entity that purchases, guarantees, and/or insures loans for the Dwelling Units that are subject to this Declaration; or (c) enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Community.

*Section 19.05 Limitation on Right to Challenge.* Any action to challenge the validity of an amendment adopted under this Article must be brought within one (1) year of the effective date of such amendment, and no action to challenge any such amendment may be brought after such time. No action to challenge such amendment may be brought after such time. Owners whose voting rights have been suspended pursuant to the Declaration or these Bylaws shall not be counted at eligible votes toward the amendment requirement.

## ARTICLE 20 GENERAL PROVISIONS.

*Section 20.01 SECURITY.* THE ASSOCIATION OR THE DECLARANT MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SAFETY ON THE PROPERTY; HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES, ACKNOWLEDGES AND AGREES THAT THE ASSOCIATION NOR THE DECLARANT IS NOT A PROVIDER OF SECURITY AND SHALL HAVE NO DUTY TO PROVIDE SECURITY ON THE PROPERTY. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY AND ALL RESPONSIBILITY TO PROVIDE SECURITY SHALL LIE SOLELY WITH EACH DWELLING UNIT OWNER. THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

*Section 20.02 Dispute Resolution.* Prior to filing a lawsuit against the Association, the Board, or any officer, director, or property manager of the Association, an Owner or Occupant must request and attend a hearing with the Board of Directors. The Owner or Occupant shall, in such notice and at such hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time, and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing from the person requesting the hearing.

*Section 20.03 Litigation.* No legal action, suit, or claim (including administrative claims) (hereinafter the "Claim") shall be commenced or prosecuted by the Association unless approved by a vote of the Owners as hereinafter provided. The Board shall prepare a budget of the total estimated cost of the Claim which shall be submitted to the Owners for a vote along with the estimate of the total cost of the Claim made by the attorney being retained by the Association for the Claim. No capital contribution made by an Owner in accordance with ARTICLE 7 of this Declaration or reserve account funds shall be used for funding the costs of the Claim. The proposed Claim, the budget, and any special assessment therefore, must all be approved by a vote of the Owners representing at least two-thirds (2/3) of the Total Association Vote; provided, however votes appurtenant to any Dwelling Unit or Dwelling Units then owned by Declarant shall be excluded if the proposed litigation or proceeding relates to a claim against Declarant. This Section shall not apply, however, to: (a) actions involving imposition and collection of assessments as provided herein, (b) actions brought by the Association to enforce the covenants in this Declaration (including, without limitation, the foreclosure of liens); (c) proceedings involving challenges to ad valorem taxation, (d) counterclaims brought by the Association in proceedings instituted against it, (e) any land-use or zoning proceedings, or (f) actions brought by the Association for damages in magistrate court. This Section shall not be amended unless such amendment is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

*Section 20.04 Partition.* The Common Property shall remain undivided, and no Owner or any other Person shall bring any action for partition or division of the whole or any part of the Common Property without the written consent of all Owners and all holders of all Mortgages encumbering any portion of the Community.

*Section 20.05 No Discrimination.* No action shall be taken by the Association or the Board of Directors which would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status, sexual orientation, or handicap.

*Section 20.06 Indemnification.* In accordance with the Georgia Nonprofit Corporation Code, and to the full extent allowed by Georgia law, the Association shall indemnify every person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such person is or was serving as a director or Officer of the Association, against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such person acted in a manner reasonably believed to be in or not opposed to the best interest of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the person is proper under the circumstances.

*Section 20.07 Implied Rights.* The Association may exercise any right or privilege given to it expressly by the Governing Documents, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

*Section 20.08 Dedication.* It is contemplated by Declarant that certain lands now or hereafter made subject to be shown on a plat of survey which includes Dwelling Units now or hereafter made subject to this Declaration may be developed or used as recreational areas, including parks and playgrounds, or as greenbelts, open spaces or walkways, and unless and until such time as Declarant shall convey by deed such property to the Association, neither the development or use of such property for any of such purposes shall constitute or be construed by implication to be a covenant, restriction, or representation that such property is dedicated or otherwise permanently committed for any of such purposes, the possible sale of such property for residential purposes, or the use thereof for other purposes, being expressly contemplated and reserved by Declarant.

*Section 20.09 Agreements.* Subject to the prior approval of Declarant (until Declarant no longer has the right to appoint and remove directors and officers of the Association pursuant to Section 3.01(b) of the Bylaws) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their respective heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

*Section 20.10 Disclosures.* Each Owner and Occupant acknowledges the following:

- (a) The Community is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.
- (b) The natural light available to and views from a Dwelling Unit may change over time due to, among other circumstances, additional development and the removal or addition of landscaping.
- (c) Light may emit from structures located on adjacent properties.



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

(e) No representations are made regarding the schools that currently or may in the future serve the Community.

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

(g) While the drainage system for surface water runoff on the Community will be constructed in accordance with applicable governmental standards, the Community may still be subject to erosion and/or flooding.

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

(i) Concrete surfaces may be cracked or may crack in the future. In addition, exposed concrete surfaces may produce concrete dust residue.

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

*Section 20.11 Variances.* The Declarant shall have the power and authority, in its sole discretion, to grant variances to this Declaration provided, however, that such variances shall be reasonably consistent with the purpose of this Declaration and shall not materially and adversely affect any existing improvements. Whenever, in the exercise of its discretion, the Declarant grants a variance to this Declaration, each Owner and Occupant of a building site hereby acknowledges that such variance shall constitute a waiver of any conflicting provisions of this Declaration. Each Owner and Occupant of a building site appoints the Declarant as its true and lawful attorney-in-fact for the limited purpose of consenting to and granting variances.

*Section 20.12 Delegation and Assignability.* Declarant shall at all times and from time to time have the right to delegate or assign to the Association any and all functions or rights reserved to Declarant under this Declaration. Any function or right so delegated or assigned to the Association may be exercised as the Board of Directors of the Association shall determine.

*Section 20.13 Enforcement.* Enforcement of the covenants and restrictions contained herein and of any other provision hereof shall be by any appropriate proceeding at law or in equity against any person or persons violating or attempting to violate said covenants, restrictions, or other provisions, either to restrain violation, to enforce personal liability, or to recover damages, or by any appropriate proceeding at law or in equity to enforce any charge or lien arising by virtue thereof. Any failure by Declarant, the Association, or any Owner to enforce any of said covenants and restrictions or other provisions shall in no event be deemed a waiver of the right to do so thereafter.

*Section 20.14 Duration.* The covenants and restrictions of this Declaration shall run with and bind the Community and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, if Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless at least sixty-six and two-thirds percent (66 2/3%) of the record Owners execute an agreement to prevent renewal of the covenants and such agreement is recorded in the Official Records. A

written instrument reflecting termination must be recorded within two (2) year prior to the expiration of the initial twenty (20) year period or any subsequent twenty (20) year period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Section.

*Section 20.15 Mergers.* Pursuant to a merger or consolidation of the Association, the Association's properties, rights, and obligations may be transferred to another non-profit corporation, or the properties, rights and obligations of another non-profit corporation may be transferred to the Association. The surviving or consolidated corporation may administer the covenants and restrictions applicable to the property now or hereafter made subject to this Declaration together with the covenants and restrictions which either the merging corporation or corporations or the surviving or consolidated corporation was, or were, otherwise entitled to administer. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants and restrictions hereby made applicable to the Property described in this Declaration, provided that, as hereinabove provided, the members of the Association, may, as an incident to any such merger or consolidation, make changes in the method of calculating the maximum amount of the annual assessments and may amend the covenants and restrictions.

*Section 20.16 No Waiver.* The failure of the Declarant, the Association, or the Owner of any Dwelling Unit, or his or her or its respective legal representatives, heirs, successors, and assigns, to enforce any restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior to or subsequent thereto.

*Section 20.17 No Liability.* Declarant has, using its best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and power to enforce any provision of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person or entity) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed or otherwise conveyed a Dwelling Unit, acknowledged that Declarant shall have no such liability.

*Section 20.18 Property Taxes on Additional Property.* The Association shall pay all property taxes on: (1) all real property owned by the Association; and (2) all or such portion of the Additional Property that the Association and its members have a right to use and enjoy pursuant to either an easement, the terms of this Declaration or a license granted by Declarant to the Association for the benefit of the members. The obligation of the Association to pay property taxes on such Additional Property shall only be for such period of time as the members of the Association have a right to use and enjoy such property.

*Section 20.19 Severability.* Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provisions of this Declaration or the application hereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and to this end the provisions of this Declaration are declared to be severable.

*Section 20.20 Captions.* The captions of each Article, Section, and Subsection hereof are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Sections to which they refer.

*Section 20.21 Implied Rights.* The Association may exercise any right or privilege given to it expressly by the Governing Documents, any use restriction or rule, and every other right or privilege reasonably to

be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

*Section 20.22 Gender and Grammar.* The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

*Section 20.23 Conflicts.* In the case of any conflict between or among any of the Governing Documents, the Articles of Incorporation shall control over both this Declaration and the Bylaws, and this Declaration shall also control over the Bylaws.

*Section 20.24 Notices.* Except as otherwise specifically provided in such document(s), as the case may be, notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner (at the address of the Dwelling Unit), to Declarant (at the address of its registered agent on file with the Secretary of State of Georgia), and to the Association (at the address of its registered agent on file with the Secretary of State of Georgia). Any Owner may designate a different address, including an electronic mail address, for notices to such Owner by giving written notice to the Association. Owners shall keep the Association advised of their current address and phone number(s) where they can be reached. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage prepaid, or delivered in person, including delivery by Federal Express or other reputable commercial courier service, or issued electronically in accordance with Chapter 12 of Title 10 of the Official Code of Georgia Annotated, the "Uniform Electronic Transactions Act." The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

*Section 20.25 Disclosures, Additional Restrictions and Additional Agreements.* Each Owner acknowledges the disclosures set forth on Exhibit "C" attached hereto and incorporated herein.

*Section 20.26 Preparer of Documents.* This Declaration was prepared by J. Tom Minor, IV, The Minor Firm, LLC, P.O. Box 2586, Dalton, GA 30722-2586.

IN WITNESS WHEREOF, the undersigned, being officers of the Declarant herein, have hereunto set their hands and seals, this the 28 day of October, 2022.

Signed, sealed and delivered  
In the presence of:

  
Unofficial Witness

  
Notary Public

My commission expires:  
[Notarial Seal]



WINKLER & GRANT PROPERTIES  
LLC:

By:   
William Winkler, Manager

## MORTGAGEE CONSENT, APPROVAL AND SUBORDINATION

The First National Community Bank (the "Mortgagee") joins in the execution of this Declaration of Covenants, Conditions and Restrictions for The Townhomes at Maddox Farm (the "Declaration") for the purpose of subordinating its liens represented by the following: (1) Security Deed from Winkler, Witherow & Grant Developers, LLC to First National Community Bank recorded in Deed Book 978 Page 126, and re-recorded in Deed Book 980 Page 462, Murray County, Georgia Land Records; (2) Assignment of Rents from Winkler, Witherow & Grant Developers, LLC to First National Community Bank, recorded in Deed Book 978 Page 141, Murray County, Georgia Land Records; (3) UCC Financing Statement recorded in Deed Book 978 Page 151, Murray County, Georgia Land Records, reflecting Winkler, Witherow & Grant Developers, LLC as debtor and First National Community Bank as secured party; (4) Assignment of Rents from Winkler, Witherow & Grant Developers, LLC to First National Community Bank recorded in Deed Book 979 Page 723, Murray County, Georgia Land Records; (5) Security Deed from Winkler, Witherow & Grant Developers LLC to First National Community Bank recorded in Deed Book 1020 Page 330, Murray County, Georgia Land Records; (6) UCC Financing Statement recorded in Deed Book 1020 Page 337, Murray County, Georgia Land Records, reflecting Winkler, Witherow & Grant Developers LLC as debtor and First National Community Bank as secured party; (7) Security Deed from Winkler, Witherow & Grant Developers LLC to First National Community Bank recorded in Deed Book 1020 Page 367, Murray County, Georgia Land Records; and (8) UCC Financing Statement recorded in Deed Book 1020 Page 374, Murray County, Georgia Land Records, reflecting Winkler, Witherow & Grant Developers LLC as debtor and First National Community Bank as secured party (the "Security Instruments") to the Declaration. Mortgagee expressly subordinates to the Declaration all right, title, interest and lien of the Mortgagee created under and by virtue of the Security Instruments with respect to the Property as defined in the Declaration, or any property hereafter made subject to the Declaration in accordance with the terms thereof. Except as set forth herein, the Security Instruments shall otherwise remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal, this the 31 day of October, 2022 .

Signed, sealed and delivered  
In the presence of:

Christine Quinn  
Unofficial Witness

Crystal Crowe 4/19/26  
Notary Public

My commission expires:



First National Community Bank

By: Greg Matthews (Seal)  
Title: Market President

eFiled & eRecorded  
DATE: 11/3/2022  
TIME: 11:23 AM  
DEED BOOK: 01038  
PAGE: 00368

**EXHIBIT "A"**

All that tract or parcel of land lying and being in Land Lot No. 205 in the 9<sup>th</sup> District and 3<sup>rd</sup> Section of Murray County, Georgia, and being more particularly described as Lot Nos. 6, 8, 24, 26, 28, 30, 46 and 48 of The Townhomes at Maddox Farm, Phase 1, according to a plat of survey thereof prepared by Julie A. Cole, Georgia Registered Land Surveyor No. 2393, dated October 31, 2022, and recorded in Plat Book E2022 Pages 134 - 135, Murray County, Georgia Land Records, reference to which plat is hereby made and incorporated herein by reference.

eFiled & eRecorded  
DATE: 11/3/2022  
TIME: 11:23 AM  
DEED BOOK: 01038  
PAGE: 00369

**EXHIBIT "B"**

All that tract or parcel of land lying and being in Land Lot No. 205 in the 9th District and 3rd Section of Murray County, Georgia and being that certain 9.82 acres, more or less, tract according to a plat of survey prepared for Tom Maddox by Julie A. Cole, Georgia Registered Land Surveyor No. 2393, dated April 20, 2019, and recorded in Plat Book E2019 Page 87, Murray County, Georgia Land Records, reference to which plat is hereby made and incorporated herein by reference.

## EXHIBIT "C"

### Disclosures

(i) *Adjacent Properties.* Declarant and Approved Builder make no representations or warranties regarding the future development or use of the Additional Property or other properties adjacent to or in the vicinity of the Community (collectively "Adjacent Properties"), which may not necessarily be restricted exclusively to residential use, but shall be subject only to uses allowed by applicable zoning ordinances, including, without limitation, office, retail or other commercial uses. Any floor plans, renderings, models, drawings, and the like, which purport to depict such Adjacent Properties, or any portion thereof, are merely projections, which are subject to change and do not reflect an actual commitment to develop the Adjacent Properties in any particular manner. No Owner and Occupant shall rely on any projected plans for the future development of the Adjacent Properties as an inducement to acquire or occupy a Dwelling Unit.

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

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

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

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

(vi) *Carbon Monoxide.* Carbon monoxide is a dangerous gas that typically cannot be smelled or seen. It is produced as a common by-product of the combustion (burning) of fossil fuels. Most fuel burning equipment (natural gas, gasoline, propane, fuel oil, and wood), if properly installed and maintained, produces little carbon monoxide. The by-products of combustion are usually vented to the outside. However, if there is a shortage of oxygen to the burner, or the venting is not adequate, carbon monoxide production can increase to dangerous levels. Common sources of carbon monoxide include gasoline engines running in closed garages, fuel-burning space heaters or water heaters with improper venting, and blocked chimneys or vent pipes. Each Owner should have a qualified professional routinely maintain and inspect all heating systems and any fuel-burning appliances serving the Owner's Dwelling Unit annually to ensure they are in good working condition. Each Owner should have a qualified professional routinely inspect appliance vents in the Dwelling Unit annually for blockages, corrosion, cracks or leakage. Each Owner should consider installing and maintaining a carbon monoxide detector and alarm that measures the amount of carbon monoxide in the air and sounds an alarm at certain levels. The detector should be considered as a backup and not as a replacement for proper use and maintenance of fuel-burning appliances.

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

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

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

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

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

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

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

(xiii) *Construction Materials.* Various substances used in the construction of the improvements in the Community may now or in the future be determined to be toxic, hazardous or undesirable and may need to be specifically treated, handled and/or removed from the Community. The construction materials used may contain some of the following chemicals and minerals in measurable amounts: water (which may allow the growth of mold, mildew, and fungus); formaldehyde (used in the manufacture of carpeting, insulation and pressed wood products); arsenic (used in treating wood products); methylene chloride (used in paint thinners); fiberglass; and petroleum products. Declarant and Approved Builder have no expertise with respect to toxic wastes, hazardous substances, pet dander, dust mites, or other undesirable substances. Such substances can be extremely costly to correct and remove and Declarant and Approved Builder shall have no liability to the Association, any Owner or any Occupant regarding the presence of such substances in



the Community. All buildings contain products that have water, powders, solids, and industrial chemicals, which will be used in construction. The water, powders, solids, and industrial chemicals will and do contain mold, mildew, fungus, spores and chemicals that may cause allergic or other bodily reactions in certain individuals. Leaks, wet flooring, and moisture will contribute to the growth of molds, mildew, fungus or spores. Declarant is not responsible for any illness or allergic reactions that an Owner or Occupant may experience as a result of mold, mildew, fungus, or spores. It is the responsibility of each Owner to keep Owner's Dwelling Unit clean, dry, well ventilated, and free of contamination and mold.

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

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

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

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

(xviii) *Exclusive Right to Use Name of Development.* No Person shall use the name "Maddox Farms" or any derivative of such names in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Maddox Farms" in printed or promotional matter where such term(s) is/are used solely to specify where a particular property is located within the Community known as Maddox Farms, and, the Association shall be entitled to use the words "Maddox Farms" in its name.

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

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

(xxi) *Gases.* The grading of the soil and other elements created by nature, as well as building materials developed by humans, many times create unwanted and undesired gases and other contaminants in homes and residential buildings, both new and used. Also, since energy conservation has become a concern, there

is a need to build homes and residential buildings that are more airtight. As a result, these homes and residential buildings trap unwanted gases in different degrees depending on how each person lives within their home or such residential building. To date measurements of such unwanted gases (such as the radon gas described below and carbon dioxide) are reported as parts of the air they occupy. Since the quality of air a person breathes can affect his or her health, Declarant recommends frequent airing of a Dwelling Unit to introduce fresh air uncontaminated with such gases.

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

(xxiii) *Humidity and Condensation.* A Dwelling Unit may trap humidity created by everyday living (cooking, bathing, laundering, etc.). As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by the Owners and Occupants, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, woodwork and sheetrock, and potentially mildew and/or mold. Blocking or covering any of the heating ventilation or air-conditioning ducts located in a Dwelling Unit may cause condensation and humidity and is contraindicated. It is the responsibility of each Owner to keep Owner's Dwelling Unit dry and well ventilated, and Declarant shall not be responsible for issues related to condensation and humidity affecting a Dwelling Unit. Humidity and condensation are normal conditions and shall not constitute a construction or design defect.

(xxiv) *Images and Photography.* At various times, Declarant, Approved Builder and the Association may use exterior images, pictures and photography of the Community, including Dwelling Units, for publication, advertising, sales and marketing purposes. Photography and film activities (including bright lighting) related to sales and marketing of the Community may occur at various times of the day within the Community so long as Declarant owns a Dwelling Unit within the Community.

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

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

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

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

(xxix) *Noise.* Owners and Occupants shall not undertake or pursue hobbies or other activities in a Dwelling Unit which violate any local noise ordinances. Accordingly, no Owner or Occupant shall install a speaker of any kind in the window of any Dwelling Unit.

(xxx) *Odors.* There may be odors (from restaurants, food being prepared and dumpsters) which affect the Community.

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

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

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

(xxxix) *Radon.* The United States Environmental Protection Agency ("EPA") has indicated that a number of homes and residential buildings in the United States experience elevated levels of radon gas. Radon is a naturally occurring gas that is caused by radioactive decay of the element radium. Since radium is contained in the earth's crust and dissolves readily in water, radon can be found virtually everywhere and can enter the home or residential buildings through a variety of sources. Owners or Occupants seeking information about radon can contact the EPA or a state environmental office. Neither Declarant, Approved Builder, nor the Association has any expertise in the measurement or reduction of radon in homes or residential buildings or regarding acceptable levels or possible health hazards associated with radon. Neither Declarant, Approved Builder, nor the Association makes any warranty or representation of any kind, express or implied, regarding the presence or absence of radon gas, or regarding the effectiveness of any architectural activities for reducing the presence of radon.

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

(xxxix) *Schools.* No representations are made regarding the schools that currently or may in the future serve the Dwelling Unit.

(xxxix) *Sound and Vibrations.* Dwelling Units on Lots within the Community will not be soundproof, free of vibrations, and sound and vibrations may be transmitted from one Dwelling Unit to another, from the Common Property to a Dwelling Unit and from outside of the Community to a Dwelling Unit. By way of example only, sound and vibrations may be felt from such things as sirens, whistles, horns, the playing of music, equipment being operated, construction activity, building and grounds maintenance being performed, ambulances, airplanes, trains and other generators of sound and vibrations typically found in and around a neighborhood. No representations are made that homes will be soundproof or free of vibrations or that sound and vibrations may not be transmitted through shared walls or from outside of the

home into the home. The home is wood frame construction and has not been designed to prevent the transmission of sound and vibration beyond what is required under applicable building codes. Among other things, sound and vibrations that may be felt or heard inside the home which originate from a neighboring home include people arguing, talking, running, jumping, playing, exercising and engaging in other life activities; dogs barking, walking or running; televisions, alarms, doorbells, garbage disposals, music, toilets, plumbing, HVAC, elevators and other equipment. Sound and vibrations from outside of homes may also be heard or felt inside the home including but not limited to sirens, whistles, bells, horns, music, construction activity, building and grounds maintenance, ambulances, airplanes, buses, trucks, automobiles, trains and other generators of sound and vibrations. Sound occurs at a variety of frequencies. In urban areas, there is often a broader range of sounds and vibrations that are produced than in other areas. Sounds originating within a home may also be heard in other parts of the home from mechanical, plumbing and sewer systems inside or serving the home including from HVAC systems and hot water heaters cycling on and off, dishwashers, washing machines, dryers, exhaust and ceiling fans, toilets flushing and water running through water and sewer systems.

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

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

(xl) *Utility Infrastructure.* Declarant and Approved Builder make no representation as to the location of mailboxes, utility boxes, streetlights, fire hydrants or storm drain inlets or basins. The zoning conditions for the Community include requirements for underground utilities throughout the Community.

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

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

(xlili) *Weather.* Changing weather patterns may cause flooding where there has never been flooding before and erosion of and damage to Lots, Common Property, and the improvements thereof. These are Acts of God and not something for which Declarant is responsible.

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

(xlvi) *Zoning.* No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future. The Community may be subject to zoning conditions requiring buffers to be maintained and limiting the removal of trees and fences. Notwithstanding anything to the contrary contained herein, Owners and the Association should confirm zoning conditions before removing trees and fences or disturbing buffers. The Property may also be subject to additional zoning conditions for the Community. To the extent Declarant or Approved Builder provides an express written warranty to an Owner at the Owner's acquisition of the Dwelling Unit, nothing in this subsection (xlvi) shall be deemed to waive any obligations of Declarant or Approved Builder under such express written warranty.

## EXHIBIT "D"

### BY-LAWS OF MADDOX FARM OWNER'S ASSOCIATION, INC. A Nonprofit Corporation (the "Association")

#### ARTICLE 1 GENERAL

*Section 1.01 Applicability.* These Bylaws provide for the self-government of Maddox Farm Owner's Association, Inc. in accordance with the Articles of Incorporation filed with the Secretary of State of Georgia, and the Declaration of Covenants, Conditions, Restrictions and Easements for The Townhomes at Maddox Farm recorded in the Official Records ("Declaration").

*Section 1.02 Name.* The name of the corporation is Maddox Farm Owner's Association, Inc. ("Association").

*Section 1.03 Definitions.* The terms used herein shall have their generally accepted meanings or such meanings as are specified in the Declaration.

*Section 1.04 Membership.* An Owner of a Dwelling Unit shall automatically become a member of the Association upon taking title to the Dwelling Unit and shall remain a member for the entire period of ownership. As may be fuller provided below, a member's spouse may exercise the powers and privileges of the member. If title to a Dwelling Unit is held by more than one (1) Person, the membership shall be shared in the same proportion as the title, but there shall be only one (1) membership and one (1) vote per Dwelling Unit. Membership does not include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. Membership shall be appurtenant to the Dwelling Unit and shall be transferred automatically by conveyance of that Dwelling Unit and may be transferred only in connection with the transfer of title.

*Section 1.05 Entity Members.* In the event an Owner is a corporation, limited liability company partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust, manager of a limited liability company, or representative of such other legal entity shall be eligible to represent such entity or entities in the affairs of the Association, including, without limitation, serving on the Board of Directors. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity or entities which are the Owner, and termination of the person's relationship with the entity or entities which are the Owner, and termination of the person's relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving and such vacancy will be filled in accordance with these Bylaws.

*Section 1.06 Voting.* Each Dwelling Unit shall be entitled to one (1) equally weighted vote, which vote may be cast by the Owner, the Owner's spouse, or by lawful proxy as provided below. When more than one (1) Person owns a Dwelling Unit, the vote for such Dwelling Unit shall be exercised as they determine between or among themselves, but in no event shall more than one (1) vote be cast with respect to any Dwelling Unit. If only one (1) co-owner attempts to cast the vote for a Dwelling Unit, it shall be

conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such Dwelling Unit. In the event of disagreement between or among co-owners and an attempt by two (2) or more of them to cast such vote or votes, such Persons shall not be recognized, and such vote or votes shall not be counted. No Owner shall be eligible to vote, either in person or by proxy, or to act as proxy for any other member or to be elected to the Board of Directors, if that Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or if the Owner has had its voting rights suspended for the infraction of any provision of the Declaration, these Bylaws, or any rule of the Association. If the voting rights of an Owner have been suspended, that Owner shall not be counted as an eligible vote for any purpose, including, without limitation, establishing a Majority or a quorum.

*Section 1.07 Majority.* As used in these Bylaws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total number of eligible votes, Owners, or other group, respectively. Unless otherwise specifically stated, the words "majority vote" means more than fifty percent (50%) of those voting in person or by proxy. Except as otherwise specifically provided in the Declaration or these Bylaws, all decisions shall be by majority vote.

*Section 1.08 Purpose.* The Association shall have the responsibility of administering the Community, establishing the means and methods of collecting the contributions to the Common Expenses, arranging for the management of the Community, and performing all of the other acts that may be required to be performed by the Association pursuant to the Georgia Nonprofit Corporation Code, O.C.G.A. § 14-3-101, *et. seq.*, and the Declaration. Except as to those matters which the Act, the Declaration or the Georgia Nonprofit Corporation Code specifically require to be performed by the vote of the Association membership, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

*Section 1.09 Electronic Documents and Electronic Signatures.*

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

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

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

**ARTICLE 2 MEETINGS OF MEMBERS.**

*Section 2.01 Annual Meetings.* The regular annual meeting of the members shall be held during the fourth quarter of each year, with the date, hour, and place to be set by the Board of Directors. No annual meeting of the Association shall be set on a legal holiday.

*Section 2.02 Special Meetings.* Special meetings of the members may be called for any purpose at any time by the President or Secretary, by request of any two (2) or more members of the Board of Directors, or upon written petition of Owners holding at least fifteen percent (15%) of the Total Association Vote. Any such written petition by the members must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition setting the date, time, and location of the meeting (which is not required to be the date, time or location requested in any petition submitted to the Association), and the Secretary shall send notice of the meeting in accordance with these Bylaws. Any special meeting called pursuant to written petition shall be set within thirty (30) days of the date of the petition. The special meeting may be held at a location where people can meet in person or by a Zoom call or similar technology where attendees can see and/or hear each other.

*Section 2.03 Notice of Meetings.* It shall be the duty of the Secretary to mail or deliver to the record Owner of Dwelling Units or to the Dwelling Units a notice of each annual or special meeting of the Association at least twenty-one (21) days prior to each annual meeting and at least seven (7) days prior to each special meeting. The notice of an annual meeting shall state the time and place of the meeting. The notice of a special meeting shall state the purpose of any special meeting, as well as the time and place where it is to be held. If any Owner wishes notice to be given at an address other than his or her Dwelling Unit, the Owner shall have designated by notice in writing to the Secretary such other address. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered proper service of notice.

*Section 2.04 Waiver of Notice.* Waiver of notice of meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any meeting of the Owners, either before, at, or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of notice of the time, date, and place thereof unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

*Section 2.05 Quorum.* Except as may be provided elsewhere, the presence of Owners, in person or by proxy, entitled to cast one fourth (1/4) of the Total Association Vote shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. Owners whose voting rights have been suspended pursuant to the Declaration or these Bylaws shall not be counted as eligible votes toward the quorum requirement.

*Section 2.06 Adjournment.* Any meeting of the Owners may be adjourned from time to time for periods not exceeding thirty (30) days by vote of the Owners holding the Majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business that could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.



*Section 2.07 Proxy.* Any member entitled to vote may do so by written proxy duly executed by the member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery, U.S. mail or facsimile transmission to any Board member or property manager. Proxies may be revoked only by written notice delivered to the Secretary, except that: (a) the presence in person by the giver of a proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting; and (b) a later dated proxy shall automatically be deemed to invalidate any previously given proxy. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

*Section 2.08 Action Taken Without a Meeting.* In the Board's discretion, any action that may be taken by the Association members at any annual, regular, or special meeting may be taken without a meeting if the Board delivers a written consent form or written ballot to every member entitled to vote on the matter.

(a) *Ballot.* A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The Board of Directors may deliver ballots and consent forms by personal delivery, U.S. Mail, facsimile transmission, e-mail, or other electronic means. Owners shall deliver their vote by ballot or consent form by whatever means is specified by the Board. All solicitations for votes by written ballot shall: (i) indicate the number of responses needed to meet the quorum requirements, (ii) state the percentage of approvals necessary to approve each matter other than election of directors; and (iii) specify the time by which a ballot must be received by the Board in order to be counted. A written ballot may not be revoked. The Association shall maintain such ballots in its file for at least three (3) years.

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

*Section 2.09 Order of Business.* The President shall establish the agenda for, and preside at, and the Secretary shall keep the minutes of, all membership meetings. The Board of Directors may establish rules of conduct and the order of business for all membership meetings. When not in conflict with the Declaration, these Bylaws, the Articles of Incorporation or meeting procedures adopted by the Board of Directors, Robert's Rules of Order (latest edition) shall govern all membership meetings. The Board may order the removal of anyone attending a membership meeting who, in the opinion of the Board, disrupts the conduct of business at such meeting.

### ARTICLE 3 BOARD OF DIRECTORS

#### Section 3.01 *Composition and Selection.*

(a) Composition and Eligibility. The affairs of the Association shall be governed by a Board of Directors. Except for directors appointed by Declarant, as provided in Section 3.01(b), the directors shall be Owners or spouses of such Owners; provided, however, no Owner and his or her spouse may serve on the Board at the same time, and no co-owners may serve on the Board at the same time. No persons shall be eligible to be elected to or continue to serve on the Board of Directors if they are shown on the books and records of the Association to be more than thirty (30) days delinquent in the payment of any assessment or charge by the Association. Directors shall be eligible to serve successive terms.

(b) Directors Appointed by Declarant. Notwithstanding anything to the contrary herein, Declarant shall have exclusive authority to appoint and remove directors and officers until the earlier of: (i) twenty-five (25) years after the recording of the Declaration, (ii) the date of which one hundred percent (100%) of the Dwelling Units have been conveyed to Persons other than Declarant or a Builder, or (iii) the surrender in writing by Declarant of the authority to appoint and remove officers and directors of the Association (the "Declarant Control Period").

(c) Number of Directors and Term of Office. During Declarant Control Period, the Board shall consist of one (1) person. Within ninety (90) days of the expiration of the Declarant Control Period, the Association shall call a meeting at which Owners shall elect three (3) directors. If such meeting is not the annual meeting of the Association, the directors elected shall serve until the next annual meeting. The two (2) directors receiving the highest number of votes shall be elected for terms of two (2) years each and the remaining director shall be elected for a term of one (1) year. At each annual meeting thereafter, a successor shall be elected to serve for a term of two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

(d) Nomination. Nomination for election to the Board shall be made by a Nominating Committee which shall be appointed by the Board of Directors at least thirty (30) days prior to the annual meeting to serve a term of one (1) year. The members of the Nominating Committee shall be announced at the annual meeting. The Nominating Committee may nominate any number of qualified individuals, but not less than the number of directors to be elected. The nominations shall be made at least fourteen (14) days prior to the annual meeting. Nominations shall also be allowed from the floor of the meeting. Each candidate shall be given a reasonable opportunity to communicate his or her qualifications to the membership prior to the election. No member shall be nominated for election to the Board, nor permitted to run for election, if more than thirty (30) days past due in the payment of any assessment. Failure to comply with this Section shall in no way invalidate the election of directors who were not nominated in accordance with the provisions hereof.

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

(f) Removal of Members of the Board of Directors. After expiration of Declarant's right to appoint officers and directors of the Association, at any annual or special meeting of the Association duly called, any one (1) or more of the members of the Board of Directors, except for directors appointed by Declarant hereunder, may be removed with or without cause by a Majority of the Total Association Vote to elect said director and a successor may then and there be elected to fill the vacancy thus created. Furthermore, any director who is more than thirty (30) days past due in the payment of any assessment or charge shall be automatically removed from the Board of

Directors, even if the director subsequently pays the amount owed, and the vacancy shall be filled as provided in Section 3.01(g) below. Any director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings may be removed by the vote of a majority of the other directors. Any director whose removal has been proposed shall be given at least ten (10) days' notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting.

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

(h) Compensation. Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a Majority of the Total Association Vote. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors. Directors also may be given nominal gifts or tokens of appreciation by the Association for recognition of services performed, not to exceed a value of One Hundred Dollars (\$100) per calendar year. For purposes hereof, reasonable food and beverages purchased for Board meetings shall not be considered compensation.

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

### Section 3.02 Meetings.

(a) Organization Meetings. The first meeting of the Board of Directors following each annual meeting of the Association shall be held within ten (10) days at the time and place determined by the Board.

(b) Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board, but such meetings shall be held at least once every six (6) months. Notwithstanding the foregoing, during the period in which Declarant shall have exclusive authority to appoint and remove directors and officers of the Association, as set forth in Section 3.01(b), the Board shall not be required to hold regular meetings.

(c) Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days' notice to each director given by regular first class or electronic mail, in person, by telephone, or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President, Vice President, Secretary, or Treasurer in like manner and on like notice on the written request of at least two (2) directors.

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

(e) Conduct of Meetings. The President shall preside over all meetings of the Board of Directors and the Secretary shall keep minute book recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. A majority of directors shall constitute a quorum for the transaction of business. One (1) or more directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other.

(f) Quorum of Board of Directors. At all meetings of the Board of Directors, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting cannot be held because a quorum is not present, a Majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time that the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

(g) Open Meetings. Board meetings need not be open to all members. However, if the Board permits members to attend Board meetings, then members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board. Notwithstanding the above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session. The Board may order the removal of any meeting guest who, in the Board's opinion, either disrupts the conduct of business at the meeting or fails to leave the meeting upon request after an announcement of reconvening in executive session.

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

(i) Telephonic or Online Participation. One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call, Zoom, or similar communication equipment or technology by means of which all persons participating in the meeting can hear each other at the same time, and those directors participating by telephone or Zoom shall be deemed to be present at such meeting for quorum and other purposes. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board.

### *Section 3.03 Powers and Duties.*

(a) Powers and Duties. The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Community and may do all such acts and things as are not by the Declaration, the Articles of

Incorporation, or these Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and shall be responsible for the following, in the way of explanation, but not limitation:

- (i) Preparation and adoption of an annual budget, in which there shall be established the contribution of each Owner to the Common Expenses;
- (ii) Making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment;
- (iii) Providing for the operation, care, upkeep, and maintenance of all of the areas which are the maintenance responsibility of the Association;
- (iv) Designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Area of Common Responsibility, Association property and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (v) Collecting the assessments, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the proceeds, and using the proceeds to administer the Association;
- (vi) Making and amending Rules and Regulations and imposing sanctions for violation thereof, including, without limitation, reasonable monetary fines;
- (vii) Opening of bank or other financial accounts on behalf of the Association and designating the signatories required;
- (viii) Making or contracting for the making of repairs, additions, and improvements to, or alterations of the Common Property in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty;
- (ix) Enforcing by legal means the provisions of the Declaration, these Bylaws, and the Rules and Regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- (x) Obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- (xi) Paying the costs of all services rendered to the Association or its members and not directly chargeable to specific Owners;
- (xii) Keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred; and
- (xiii) Contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominium associations or other associations or corporations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

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

(c) Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration or improvement of the Common Property and facilities without the approval of the members of the Association; the Board shall also be authorized to

borrow money for other purposes; provided, however, the Board shall obtain membership approval in the same manner as provided for special assessments if the proposed borrowing is for the purpose of modifying, improving, or adding amenities to the Community or the total amount of such borrowing exceeds or would exceed Ten Thousand Dollars (\$10,000) outstanding debt at any one time.

(d) Liability and Indemnification of Officers, Directors and Committee Members. The Association shall indemnify every officer, director, and committee member (including directors, officers, and committee members appointed by Declarant during the period of Declarant control) against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person is an officer, director or committee member at the time such expenses are incurred subject to the limitations below. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer, director, or committee member in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The Association, in determining whether or not to indemnify a director, officer or committee member, shall not impute knowledge to said director, officer or committee member from any source whatsoever; rather, any such determination shall be based on the actual knowledge of the director, officer or committee member. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers, directors or committee members may also be members of the Association), and the Association shall indemnify and forever hold each such officer, director or committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member or former officer or director, may be entitled. The Association shall maintain, as a Common Expense, adequate general liability and, may obtain if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

#### *Section 3.04 Committees.*

(a) Nominating Committee. Pursuant to Section 3.01(d) of this Article, there may be a Nominating Committee appointed to perform the functions specified in Section 3.01(d) of this Article.

(b) Architectural Control Committee. The Board shall establish an Architectural Control Committee for the purpose of establishing and maintaining architectural standards in the Community as provided in the Declaration.

(c) Other Committees. There shall be such other committees as the Board shall determine with the powers and duties that the Board shall authorize.

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

### **ARTICLE 4 OFFICERS**

*Section 4.01 Designation.* The principal officers of the Association shall be the President, the Secretary, and the Treasurer. The Board of Directors may appoint one (1) or more the Vice Presidents, Assistant

Treasurers, Assistant Secretaries, and such other subordinate officers as in its judgment may be necessary. Any assistant or subordinate officers shall not be required to be members of the Board of Directors. Except for the offices of Secretary and Treasurer, which may be held by the same person, no person may hold more than one (1) office.

*Section 4.02 Selection of Officers.* Except during the period in which the Declarant has the right to appoint the officers of the Association under Section 3.01(b) of these Bylaws, the officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board following each annual meeting of the members and shall hold office at the pleasure of the Board of Directors and until a successor is elected.

*Section 4.03 Removal of Officers.* Upon the affirmative vote of a Majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and a successor may be elected.

*Section 4.04 Resignation.* Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

*Section 4.05 Vacancies.* A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

*Section 4.06 President.* The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the power to appoint committees from among the members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

*Section 4.07 Vice President.* The Vice President, if any, shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

*Section 4.08 Secretary.* The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under Georgia law.

*Section 4.09 Treasurer.* The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

*Section 4.10 Other Officers.* Other offices may be created by the Board, and the Board members which hold such offices shall have such titles and duties as are defined by the Board.

*Section 4.11 Agreements, Contracts, Deeds, Leases, Etc.* Except during the Declarant Control Period, all agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association

shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors. During the Declarant Control Period, all agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least one (1) officer or by such other person or persons as may be designated by resolution of the Board of Directors.

## ARTICLE 5 RULE MAKING AND ENFORCEMENT

*Section 5.01 Authority and Enforcement.* The Community shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal, and enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of Dwelling Units and the Common Property; provided, however, copies of all such Rules and Regulations shall be furnished to all Owners and Occupants. Any rule or regulation may be repealed by the affirmative vote or written consent of a Majority of the Total Association Vote and the consent of the Declarant so long as the Declarant has the right to appoint and remove directors, at an annual or special meeting of the membership. Every Owner and Occupant shall comply with the Declaration, Bylaws and Rules and Regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one (1) or more aggrieved Dwelling Unit Owners, to take action to enforce the terms of the Declaration, Bylaws or Rules and Regulations. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Dwelling Unit, and to suspend an Owner's right to vote or to use the Common Property for violation of any duty imposed under the Declaration, these Bylaws, or any Rules and Regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Dwelling Unit. In the event that any Occupant of a Dwelling Unit violates the Declaration, Bylaws, or a rule or regulation and a fine is imposed, notice of such violation shall be sent to the Owner and the Occupant, and the fine shall first be assessed against such Occupant; provided, however, if the fine is not paid by the Occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association, and the fine shall be an assessment and a lien against the Dwelling Unit until paid. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

*Section 5.02 Fining and Suspension Procedure.* The Board shall not impose a fine, suspend the right to vote, or suspend the right or to use the Common Property (unless an Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association in which case such suspensions shall be automatic; provided further, however, suspension of common utility services shall require compliance with the provisions of the Declaration, where applicable) unless and until notice of the violation is given as provided in Section 5.02(a) below. Any such fine or fines may be effective or commence upon the sending of such notice or such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge such fine under Section 5.02(b) below.

(a) *Notice.* If any provision of the Declaration or Bylaws or any Rule or Regulation of the Association is violated, the Board shall serve the violator with written notice sent certified mail, return receipt requested, which shall state: (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a statement that the violator may challenge the fact of the occurrence of a violation, the proposed sanction, or both, by written challenge and written request for a hearing before the Board, which request must be received by the Board within ten (10) days of the date of the notice; (iv) the name, address, and telephone number of a person to contact to challenge the proposed action. If a timely challenge is made and the violation is cured within ten



(10) days of the date of the notice, the Board, in its discretion, may, but is not obligated to, waive any sanction or portion thereof. In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(b) *Hearing.* If the alleged violator timely challenges the proposed action, a hearing before the Board of Directors shall be held in executive session affording the violator a reasonable opportunity to be heard. The hearing shall be set at a reasonable time and date by the Board, and notice of time, date (which shall be not less than ten (10) days from the giving of notice without the consent of the violator), and place of the hearing and an invitation to attend the hearing and produce any statements, evidence, and witnesses shall be sent to the alleged violator. Proof such notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer or director who delivered such notice. The notice requirement shall be deemed satisfied if the violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. This Section shall be deemed complied with if a hearing is held and the violator attends and is provided an opportunity to be heard, notwithstanding the fact that the notice requirements contained herein are not technically followed.

*Section 5.03 Additional Enforcement Rights.* Notwithstanding anything to the contrary herein contained, the Association, acting through its Board of Directors, may elect to enforce any provision of the Declaration, the Bylaws, or the Rules and Regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking Rules and Regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section 5.02 of this Article. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. The Association or its duly authorized agent shall have the power to enter a Dwelling Unit or upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, or the Rules and Regulations; provided, however, written notice shall be given to the Owner of the Dwelling Unit at least two (2) days prior to the time that any items of construction are altered or demolished. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Owner and shall be collected as provided herein for the collection of assessments.

## ARTICLE 6 MISCELLANEOUS

*Section 6.01 Notices.* Unless otherwise prohibited in these Bylaws, all notices, demands, bills, statements, or other communications shall be given in accordance with the provisions of Section 20.24 of the Declarations.

*Section 6.02 Severability.* The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws or the Declaration.

*Section 6.03 Captions.* The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof.

*Section 6.04 Gender and Grammar.* The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

**Section 6.05 Fiscal Year.** The fiscal year of the Association may be set by resolution of the Board of Directors. In the absence of such resolution by the Board of Directors, the fiscal year shall be the calendar year.

**Section 6.06 Financial Review.** A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board and a financial statement prepared. However, after having received the Board's financial statement review at the annual meeting, the Owners may, by a Majority of the Total Association Vote, require that the accounts of the Association be audited as a Common Expense by an independent accountant. Such statement shall be made available to the holder, insurer, or guarantor of any first mortgage on a Unit upon submission of a written request and must be available within one hundred twenty (120) days of the Association's fiscal year end. If an audited financial statement by an independent accountant is not required, a mortgage holder may have an audited statement prepared at its own expense.

**Section 6.07 Conflicts.** The duties and powers of the Association shall be those set forth in the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, or the Articles of Incorporation, then the provisions of the Georgia Nonprofit Corporation Code, as may be applicable, the Declaration, the Articles of Incorporation and these Bylaws, in that order, shall prevail, and each Owner of a Dwelling Unit, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

**Section 6.08 Amendment.** These Bylaws may be amended as provided in Article 19 of the Declarations.

**Section 6.09 Books and Records.**

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

- (i) Its Articles or restated Articles of Incorporation and all amendments to them currently in effect;
- (ii) Its Bylaws or restated Bylaws and all amendments to them currently in effect;
- (iii) Resolutions adopted by either its members or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- (iv) Resolutions adopted by either its members or Board of Directors relating to the characteristics, qualification, rights, limitations, and obligations of members or any class or category of members;
- (v) The minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;
- (vi) All written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;
- (vii) A list of the names and business or home addresses of its current directors and officers; and
- (viii) Its most recent annual report delivered to the Secretary of State of Georgia.

(b) **Notice to Inspect.** A member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the member wishes to inspect and copy only if the member's demand is made in good faith and for a proper purpose that is

reasonably relevant to the member's legitimate interest as a member; the member describes with reasonable particularity the purpose and the records the member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose:

(i) Excerpts from minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the members, and records of action taken by the members or the Board without a meeting, to the extent not subject to inspection under Section 6.09(a);

(ii) Accounting records of the Association; and

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

(c) Charge for Inspection. The Association may impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided to the Member. Notwithstanding anything to the contrary, the Board may limit or preclude member inspection of confidential or privileged documents, including attorney/client privileged communications, executive session meeting minutes, and financial records or accounts of other members. Minutes for any Board or Association meetings do not become effective and an official Association record until approved by the Board or Association membership, as applicable, at a subsequent meeting.