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**CROSS REFERENCES:**  
Declaration of Covenants DB 45183 Page 128  
Deed Under Power (RES) DB 49424, Page 41

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**DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR  
58 SHERIDAN TOWNHOMES  
FULTON COUNTY, GEORGIA**

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**DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR 58 SHERIDAN TOWNHOMES  
FULTON COUNTY, GEORGIA**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS is made by RES-GA SHERIDAN, LLC, a Florida Limited Liability Company (the "*Declarant*").

WITNESSETH:

WHEREAS, Declarant is the owner, or has the consent of the owner, of all that tract or parcel of land lying and being in Land Lot 100 of the 17<sup>th</sup> District, Fulton County, Georgia, as shown on the legal description attached hereto as Exhibit "A" and incorporated herein by reference (said property, together with any other real property that is hereafter submitted to the provisions of this Declaration, less and except any portions thereof that may be dedicated to Fulton County, Georgia or any municipality or other government entity, and less and except any real property withdrawn from the provisions of this Declaration in accordance with the terms and conditions contained herein, being herein referred to as the "Property"); and

WHEREAS, 58 Sheridan, LLC, a Georgia limited liability company, filed of record that certain Declaration of Covenants, Restrictions and Easements for 58 Sheridan recorded at Deed Book 45183, Page 128, *et seq.*, Fulton County, Georgia Records (said declaration, as may have been previously amended, being herein referred to as the "Prior Declaration"); and

WHEREAS, the Prior Declaration has been terminated and extinguished with respect to that portion of the Property owned by Declarant by virtue of that certain Deed under Power of Sale to RES-GA Sheridan, LLC recorded at Deed Book 49424, Page 41, Fulton County, Georgia Records, foreclosing a Deed to Secure Debt recorded at Deed Book 44626, Page 634, Fulton County, Georgia Records; and

WHEREAS, Declarant, with the consent of the owners, intends to impose on the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and to establish a procedure for the overall development, administration, maintenance and preservation of the Property; and

WHEREAS, in furtherance of such plan, it is desirable to create 58 Sheridan Townhome Association, Inc. to own, operate, maintain and/or manage, as applicable, the Area of Common Responsibility (as defined below) and to administer and enforce the covenants and restrictions and design guidelines imposed hereby; and

WHEREAS, it is intended that every owner of any of the Lots automatically, and by reason of such ownership in this Declaration, become a Member of the Association and be subject to its rules and regulations and the assessments and charges made by the Association;

NOW THEREFORE, Declarant does hereby submit the Property to the provisions of this Declaration. This document establishes a mandatory membership homeowners association, but does not and is not intended to submit the Property to the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.*

**ARTICLE I.  
DEFINITIONS**

As used in this Declaration, the following terms shall have the meanings ascribed to them in this Article, such definitions being cumulative of those set forth elsewhere in this Declaration.

*"Additional Property"* shall mean any and all real property lying and being within five (5) miles of the Property.

**"Annual Assessment"** shall have the meaning specified in the Article entitled "ASSESSMENTS", and shall constitute the assessments which, pursuant to the provisions of such Article, shall be levied by the Association against the Lots each year for the purpose of raising the funds necessary to pay the "Annual Expenses" (as that term is defined in such Article).

**"Architectural Control Committee" or "ACC"** shall mean those individuals appointed to have jurisdiction over construction on or within any portion of the Property and responsibility for administration of design guidelines, as more fully described in the Article entitled "Architectural Control".

**"Area of Common Responsibility"** shall mean the Common Areas, together with any additional areas or obligations, if any, which by the terms of this Declaration or by contract or agreement with any other Person become the responsibility of the Association.

**"Articles of Incorporation"** shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

**"Association"** shall mean 58 Sheridan Townhome Association, Inc., a Georgia non-profit corporation, its successors and assigns.

**"Board of Directors" or "Board"** shall mean the body responsible for the administration of the Association, as provided in the Bylaws.

**"Builder"** shall mean any Person who purchases one or more Lots for the purpose of construction of improvements for later sale to consumers or who purchases one or more parcels of land within the Property for further subdivision, development and/or resale in the ordinary course of such Person's business. Any Builder occupying or leasing a Lot for residential purposes shall cease to be a Builder with respect to such Lot on the date of such occupancy of the Lot for residential purposes.

**"Bylaws"** shall mean the Bylaws of the Association, as the same may be amended from time to time. The initial Bylaws adopted by the Association are attached hereto as Exhibit "B".

**"Common Areas"** shall mean, singularly or collectively, as applicable, all land and personal property, and all facilities and improvements located thereon, which hereafter shall be deeded to, or acquired by, the Association for the common use and enjoyment of the Owners.

**"Community Wide Standards"** shall mean the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors or the Architectural Control Committee.

**"County Clerk"** shall mean the Clerk of the Superior Court of the county where the Property is located.

**"Declarant"** shall mean RES-GA Sheridan, LLC, a Florida limited liability company, and shall include any successor or assign who shall acquire any portion of the Property for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, however, that there shall be only one "Declarant" hereunder at any one time.

**"Declaration"** shall mean this Declaration of Covenants, Restrictions and Easements, as the same may be hereafter amended in accordance with the terms hereof.

**"Development Period"** shall mean the period of time during which the Declarant owns any property that is subject to this Declaration or has the unilateral right to subject Additional Property to this Declaration pursuant to Article II. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument with the County Clerk.

*"Driveway Area"* shall mean the paved area extending from the garage doors of an Improved Lot to the adjacent private street.

*"Improved Lot"* shall mean a Lot (i) upon which there is located a structure for which a certificate of occupancy has been issued by the applicable governmental authority, and (ii) which has been sold to a Person who is not the Declarant or a Builder.

*"Limited Use Areas"* shall mean the front stoop, front steps, window wells, deck, mail box, utility meter(s) and Driveway Area appurtenant to an Improved Lot.

*"Lot"* shall mean each portion of the Property which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family, as shown and indicated by the word "Unit" or "Lot" on any of the Plats which are hereafter recorded.

*"Member"* shall mean a Person subject to membership in the Association pursuant to Article V hereof.

*"Mortgage"* shall mean a deed or other document by means of which title to any Lot is conveyed or encumbered to secure a debt. The term *"Mortgagee"* shall refer to a beneficiary or holder of a Mortgage.

*"Occupant"* shall mean any tenant of an Improved Lot, any Person residing in an Improved Lot, and any Person staying overnight in or on an Improved Lot for a total of more than thirty (30) days, whether consecutive or nonconsecutive, in any calendar year.

*"Owner"* shall mean any Person who is a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Lot; provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be an Owner.

*"Person"* shall mean a natural person, corporation, trust, partnership or any other legal entity.

*"Plats"* shall mean that certain Final Plat for 58 Sheridan, Phase 1, recorded at Plat Book 331, Page 44, Fulton County, Georgia Records, and all plats for any portion of the Property, and any amendments to such Plats, which are hereafter recorded in the County Clerk's plat book records.

*"Property"* shall have the meaning given to it in the first recital paragraph of this Declaration.

*"Supplemental Declaration"* shall mean an instrument filed with the County Clerk which imposes additional restrictions and/or obligations on the land described in such instrument.

*"Unimproved Lot"* shall mean a Lot which is not an Improved Lot.

## **ARTICLE II. PROPERTY SUBMITTED TO THIS DECLARATION**

Section 1. Lots Hereby Subjected to this Declaration. The Declarant, for itself and its successors and assigns, does hereby submit the Property and the Lots to this Declaration. The Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration, including, but not limited to, the lien provisions set forth herein. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Lots shall be a permanent charge thereon, and shall run with the Lots.

Section 2. All Lots Bear the Burdens and Enjoy the Benefits of this Declaration. Every Owner, by taking record title to a Lot, agrees to all of the terms and provisions of this Declaration. Each of the Lots is subject to all burdens, and enjoys all benefits, made applicable hereunder.

Section 3. Annexation of Additional Property. The Declarant may, at any time, and from time to time, prior to ten (10) years from the date hereof, subject all or part of the Additional Property to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration by executing and recording with the County Clerk an amendment to this Declaration describing the property being annexed. Declarant further has the right to convey to the Association additional Common Areas contained within such Additional Property, the maintenance of which may increase the Annual Assessment as provided elsewhere herein and may increase the amount of Annual Assessment which shall be levied against each Lot.

From and after such recording, the annexed property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including, without limitation, all lien and assessment provisions set forth in this Declaration, and all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration shall be a permanent charge on, and shall run with, such annexed property.

No approval from any Member of the Association, or from anyone else whomsoever, shall be required for the Declarant to subject Additional Property to this Declaration. In addition to the controls, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall further have the right at its election, without the consent of any Owner or Owners, to subject any such annexed property to additional controls covenants conditions, restrictions, easements, development guidelines, charges and liens by filing a Supplemental Declaration with the County Clerk covering only such annexed property. The Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements and development guidelines contained in or authorized by such Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the annexed property in order to reflect the different character and intended use of such property.

Section 4. Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period for the purpose of removing any portion of the Property from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Property. This provision includes but is not limited to Declarant's right to convey property to any conservation or land trust or governmental entity as deemed desirable in Declarant's discretion. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if same is not the Declarant. If the property is part of the Common Areas, the Association shall consent to such withdrawal.

Section 5. Lot Boundaries. In the event that the side boundary of an Improved Lot abuts the side boundary of another Improved Lot, the side boundary shall be a line consistent with and along the center of all firewalls separating such Lot from the abutting Lot. In the event that the side boundary of an Improved Lot does not abut the side boundary of another Lot, the side boundary shall be a line consistent with and along the outer exterior surface of the outside wall of such Lot. In the event of any discrepancy between the boundaries of a Lot, as described herein, and the boundaries of such Lot when shown on the recorded Plats, the description of the boundaries of the Lot set forth herein shall control. All of the area within the boundaries of each of the Lots, as herein described, and as shown and depicted on the recorded Plats, shall for all purposes constitute real property which may be owned in fee simple, subject to the terms, provisions, liens, charges, covenants, easements and restrictions of this Declaration.

### ARTICLE III. ASSOCIATION PROPERTY

Section 1. Common Areas and Association Property. The Declarant shall have the right to transfer and convey to the Association, or cause the transfer and conveyance to the Association of, any portion of the Property. All portions of the Property which are so transferred or conveyed to the Association shall thereafter constitute Common Areas. Said right may be exercised by the Declarant any time, and from time to time, prior to ten years from the date hereof. Common Areas shall be conveyed to the Association subject to the rights and easements set forth in this Article, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements.

Section 2. Member's Rights in Association Property. Except for the Limited Use Areas which are reserved for the use of the Improved Lot to which such Limited Use Areas are appurtenant, every Owner of every Lot shall have a non-exclusive right and easement of enjoyment and use in and to the Common Areas and such right and easement shall be appurtenant to, and shall pass with, the title to the Lot(s) owned by such Owner. The right and easement of enjoyment and use of the Common Areas are and shall be subject to the easements which are described in the Article entitled "Easements and Agreements Regarding the Property", to the right of the Association to promulgate reasonable rules and regulations regarding the use of Common Areas, and the right of the Association, as provided in the Bylaws, to suspend the enjoyment rights of the Owner of any Lot during any period in which any assessment which is due to the Association from such Owner remains unpaid, and such period as the Board of Directors may consider appropriate for any infraction of its published rules and regulations. No such suspension, however, shall prohibit the Owner of any Lot from using the Common Areas to the extent necessary for such Owner to have access to and from his Lot.

The Board of Directors may permit other persons who are not residents of any Lots to use the Common Areas upon such terms and conditions, and for the payment of such fees, as shall be determined by the Board of Directors.

Section 3. No Partition. The Common Areas shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the Property and without the written consent of all holders of all Mortgages encumbering any portion of the Property.

Section 4. Condemnation. In the event that any part of the Common Areas shall be taken by any authority having the power of condemnation or eminent domain or conveyed in lieu of, and under threat of, condemnation by the Board of Directors acting on the written direction of the Owners of at least 66% of the Lots (and, if during the Development Period, the written consent of Declarant), the Association shall restore or replace the improvements on the remaining land included in the Common Areas to the extent feasible unless, within sixty (60) days after such taking, the Owners of at least 66% of the Lots (and Declarant, if during the Development Period) otherwise agree. The provisions of the subsection immediately below regarding funds for the repair of damage or destruction shall apply. If the taking or conveyance does not involve any improvements on the Common Areas, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board of Directors shall determine.

Section 5. Damage or Destruction. In the event that any improvements located on any Common Areas shall be damaged or destroyed because of the occurrence of any casualty, the Board of Directors shall proceed with the filing and settlement of all claims arising under any policy of insurance maintained by the Association with respect to such improvements and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements.

Any such damage or destruction shall be repaired or reconstructed unless it shall be decided, within ninety (90) days after the occurrence of casualty, by the Owners of at least 66% of the Lots, and by Declarant, if during the Development Period, not to so repair or reconstruct such damage. In the event that it shall be so decided not to repair or reconstruct some damage or destruction, the proceeds of any insurance as may become payable to the Association as a result of such damage or destruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a special assessment to cover the shortfall.

Section 6. Permitted Actions. Notwithstanding anything to the contrary in this Article, the Association, acting through the Board of Directors, may grant easements over the Common Areas for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Areas, without the approval of the membership.



Section 7. Reconveyance of Common Areas. Upon request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Common Areas originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

**ARTICLE IV.  
EASEMENTS AND AGREEMENTS REGARDING THE PROPERTY**

Section 1. Easements and Agreements Regarding Association Property. In addition to all easements and agreements of record, the Property and Common Areas shall further be subject to, and Declarant and the Association do hereby grant, the following easements:

(a) Easements Shown on Plats. The Property shall be subject to all easements, dedications, borders, buffers, restrictions and the like which are shown and depicted on the Plats as affecting and burdening the Property.

(b) Use of Common Areas. Declarant hereby reserves an easement for the exclusive use of such portions of the Common Areas (other than the Limited Use Areas appurtenant to Improved Lots that have been sold to a Person who is not the Declarant or a Builder) as may be reasonably desirable, convenient or incidental to the construction and installation of improvements on, and the sale of, any Lots, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements shall be exercisable by any and all persons who the Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers, Builders, and their subcontractors, irrespective of whether such persons are affiliated with the Declarant. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate one (1) year and thirty (30) days after the date that all of the Lots are Improved Lots. Such easements shall and do exist without affecting the obligation of the Owner of any Lot to pay assessments or charges coming due during such period of time as portions of the Common Areas shall be used by authorized persons pursuant to the exercise of the easements herein stated.

(c) Declarant Activities. Notwithstanding any provision contained in this Declaration, the Bylaws or the Articles of Incorporation to the contrary, or any amendments thereto, until the expiration of the Development Period, it shall be expressly permissible for Declarant, and any Person authorized by Declarant, to maintain and carry on, upon such portion of the Property as Declarant may deem necessary, such facilities and activities as may reasonably be desired by the Declarant and such authorized Persons, including but without limitation, the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Property; the right to tie into any portion of the Property with driveways, parking areas and walkways; the right to tie into and/or maintain and repair any device (without a tap-on or any other fee for doing so), replace, relocate, maintain, and repair any device which provides utility or similar service including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under, or over the Property; the right to carry on sales, leasing and promotional activities on the Property; the right to place and maintain signs, banners and decorations of any type, and the right to construct and operate business offices, construction trailers, and model residences.

(d) Easements for Exclusive Use and Enjoyment of Limited Use Areas. Subject to the maintenance easements and architectural control provisions contained in this Declaration, Declarant hereby grants to each Owner, and their guests, families and invitees, the exclusive use and enjoyment of the Limited Use Areas appurtenant to such Owner's Lot. In the event that a Limited Use Area is shared by two adjoining Lot Owners (as in the case of certain of the front steps, stoops and window wells), such exclusive use and enjoyment shall be jointly shared by the two adjoining Lot Owners.

Section 2. Easements Over All Lots. The Lots shall be subject to, and the Declarant does hereby grant, the following non-exclusive perpetual and temporary easements for the enjoyment of Declarant, the Association, any Builders and subcontractors authorized by Declarant, the Members, the Owners, and the successors-in-title of each:

(a) Easements Shown on Plats. Each Lot shall be subject to all easements, borders, buffers, restrictions and the like which are shown and depicted on the Plats as affecting and burdening such Lot.

(b) Entrance Features. There shall be a perpetual easement in favor of the Association for maintenance, repair and landscaping of the entrance monuments which are or will be located on Property and the repair and replacement of any water pipes and electrical lines which are a part thereof. The Owners of any Lots on which these features are placed, or against which such features abut, shall not remove, camouflage, damage or otherwise alter in any way said entrance sign(s) and landscaping.

(c) Entry. Each Lot shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go upon such Lot under such circumstances and for such purposes as are described elsewhere in this Declaration

(d) Encroachments and Overhangs. Each Lot shall have a three (3) foot easement as measured from any point on the common boundary between such Lot and any adjoining Lot, or between such Lot and adjacent Common Areas, for encroachments and overhangs due to the placement or settling of the improvements constructed, reconstructed or altered thereon, unless such encroachment or overhang was due to the willful act of an Owner or the Association.

(e) Maintenance. Each Lot shall be subject to a perpetual easement in favor of the Association and its contractors for the maintenance of the Lots as provided for in the Article entitled "Maintenance" herein. There is further reserved for the benefit of each Lot a reciprocal appurtenant easement between all adjacent Lots and between any Lot and adjacent Common Areas for the purpose of maintaining or repairing the improvements located on each such Lot. All such maintenance shall be performed with a minimum of interference to the quiet enjoyment of the adjacent Lot's Owner. Except in emergencies, entry onto a Lot shall occur only after providing the Owner of such Lot not less than forty-eight (48) hours advance notice and shall occur only during reasonable hours. Each Owner and the Association shall cooperate with each other Owner and/or Occupant for purposes of exercising these easement rights and these easements shall be exercised only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner or Association exercising these easement rights shall pursue such work promptly and diligently and shall promptly repair any damage that arises out of such maintenance or repair work to the Lot(s) over which this easement is exercised.

(f) Private Streets. All Lots shall be subject to a perpetual easement in favor of the Association and all other Lot Owners for maintenance, management, repair, landscaping, and non-exclusive ingress, egress, use and enjoyment, of the private streets located on the Property, as shown on the Plats. This easement right includes the right of contractors engaged by the Association to enter upon any and all Lots from time to time if necessary in order to perform any of the above repair or maintenance work.

(g) Slope Control. Each Lot shall be subject to an easement for slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow.

(h) Surface Water Drainage. Each Lot shall be subject to a perpetual easement in favor of the Association and all other Lots for the drainage of surface waters over and across such Lot, including any runoff or carry over of water from one Lot to another which may result from the drain lines and downspouts situated on the Property.

(i) Utilities. Each Lot shall be subject to a perpetual easement in favor of the Declarant, the Association, authorized Builders and subcontractors, and adjoining Lot Owners, their contractors, or subcontractors where utilities are installed on said Owner's Lot, as well as any public utility company, water main, water services, sewer services or cable company, for the erection, installation, construction and maintenance, repair and replacement of wires, lines, conduits, sewer taps, and attachments appurtenant to, above and below ground and in connection with the transmission of electricity, gas, water, telephone, community antennae or satellite dish, television cables and other utilities. The Association shall be responsible for the maintenance and management of the water and sewer facilities.

(j) Construction and Boundary Line Improvements. Each Lot shall be subject to a temporary construction easement in favor of Declarant, authorized Builders and contractors, and adjoining Lot Owners for construction

activities on any Lot, including but not limited to the installation of boundary line improvements such as walls, fences and hedges. Any improvement made by an adjoining Lot Owner shall be subject to the architectural control provisions contained herein and must be approved by Declarant or the Association, as applicable, prior to installation.

**ARTICLE V.  
THE ASSOCIATION**

Section 1. The Association. Prior to the date this Declaration has been filed for record with the County Clerk, Declarant has caused the Association to be formed, and the Association does now exist, under its Articles of Incorporation and Bylaws.

The Association is and shall be responsible for the maintenance of the Area of Common Responsibility, the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as are required of the Association hereunder or as the Board of Directors shall deem to be in the best interests of the Members of the Association.

Section 2. Membership. Every Owner is and shall be a Member of the Association. In no event shall such Membership be severed from the Ownership of such Lot.

Section 3. Remedies, Enforcement and Suspension of Membership Rights. In addition to and not in limitation of all other rights it may have, the Association, acting through its Board of Directors, shall have the full right and authority to enforce the architectural control provisions, use restrictions and all other provisions of the Declaration and Bylaws and the rules and regulations promulgated thereunder by the imposition of reasonable monetary fines, suspension of use and voting privileges, suspension of water, cable or other utility service provided by or through the Association, and the exercise of self-help (specifically including but not limited to the towing or booting of vehicles that are in violation of the parking rules and regulations). Any suspension of use and voting privileges shall not affect such Member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the Member's Lot in favor of the Association. **THE ASSOCIATION, ACTING THROUGH ITS BOARD OF DIRECTORS, SHALL HAVE THE FULL AND COMPLETE RIGHT TO EXERCISE REASONABLE BUSINESS JUDGMENT IN THE DECISION TO PURSUE ENFORCEMENT ACTION IN ANY PARTICULAR CASE, WITHOUT WAIVER OF THE ASSOCIATION'S RIGHT TO ENFORCE THE SAME PROVISION AT A LATER TIME UNDER OTHER CIRCUMSTANCE OR PRECLUDE THE ASSOCIATION FROM ENFORCING ANY OTHER COVENANTS, RESTRICTION OR RULE. NO DELAY, FAILURE OR OMISSION ON THE PART OF THE ASSOCIATION OR ANY AGGRIEVED OWNER IN EXERCISING ANY RIGHT, OBLIGATION, POWER OR REMEDY SHALL OPERATE AS A WAIVER OR BAR OR OTHERWISE AFFECT ITS RIGHT TO EXERCISE OR ENFORCE ANY RIGHT, POWER OR REMEDY PROVIDED FOR HEREIN. NO RIGHT OF ACTION SHALL ACCRUE NOR SHALL ANY ACTION BE BROUGHT OR MAINTAINED BY ANYONE WHOMSOEVER AGAINST THE ASSOCIATION FOR OR ON ACCOUNT OF ANY FAILURE TO BRING ANY ACTION ON ACCOUNT OF ANY VIOLATION OR BREACH, OR THREATENED VIOLATION OR BREACH OF THE PROVISIONS OF THIS DECLARATION, THE BYLAWS OR THE RULES AND REGULATIONS, HOWEVER LONG CONTINUED, OR FOR ADOPTING PROVISIONS WHICH MAY BE DEEMED UNENFORCEABLE.**

Section 4. Meetings of the Membership. All matters concerning the meetings of Members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to Members, the quorum required for the transaction of business at any meeting, and the vote required on any matter, shall be as specified in this Declaration, or in the Articles of Incorporation or the Bylaws, or by law.

Section 5. Association Acts Through Its Board of Directors. Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the Members of the Association or the Owners of

Lots must vote. No member of the Board of Directors of the Association or any officer of the Association (including, without limitation, any such individual who shall have been appointed by Declarant during the Declarant Control Period, as such term is defined in the Bylaws) shall be personally liable to any Owner of any Lot for any mistake of judgment or for any other act or omission of any nature whatsoever, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud.

Section 6. Professional Management. The Association may, but shall not be obligated to, obtain and pay for the services of any Person or other entity to manage the affairs of the Association, or any part thereof, as the Board of Directors deems to be in the best interests of the Association.

## ARTICLE VI. ASSESSMENTS AND OTHER CHARGES

Section 1. Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance for a Lot, covenants and agrees to pay to the Association all assessments and charges which are levied by the Association against the Lot(s) owned by such person in accordance with the terms and provisions of this Declaration.

All sums lawfully assessed by the Association against any Lot and the Owner thereof, together with interest thereon, late fees in the amount of 10% of the sums owed or \$10.00, whichever is higher, and all costs of collection thereof, shall, from the time the sums become due and payable, be the personal obligation of the Owner of such Lot and constitute a continuing lien in favor of the Association on such Lot prior and superior to all other liens whatsoever except: (1) Liens for ad valorem taxes on the Lot; (2) The lien of any first priority Mortgage covering the Lot and the lien of any Mortgage recorded prior to the recording of this Declaration; and (3) The lien of any secondary purchase money Mortgage covering the Lot, provided that neither the grantee nor any successor grantee of the Mortgage is the seller of the Lot. The covenant to pay assessments herein stated is and shall be a covenant running with the land.

Section 2. Purposes of Assessments and Charges. The assessments and charges levied by the Association pursuant to this Article shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to this Declaration, the Articles of Incorporation and the Bylaws and for such other purposes as the Board of Directors shall deem necessary or desirable to promote the health, safety and welfare of the Association and its Members (such costs and expenses being herein referred to as the "Annual Expenses"). Without limiting the generality of the foregoing, the Annual Expenses shall include the costs of: payment of all costs and expenses incurred by the Association in connection with the maintenance of the Area of Common Responsibility and the Association's other operations; payment of all charges for water service and any other utility services provided by or through the Association; payment of the premiums for all fidelity bonds which shall be obtained by the Association; the payment of the fees of such management firms as the Board of Directors shall employ; and payment of fees for the provision of such professional services as the Board of Directors shall determine to be required by the Association, including but not limited to legal, accounting and architectural services.

Section 3. Determination of Annual Assessment and Shares Thereof. Prior to the commencement of each fiscal year of the Association or at any time it deems best (said fiscal year being specified in the Bylaws), the Board of Directors shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures and reserves based upon such estimate and providing for the total annual assessment to be levied against the Members of the Association for such fiscal year (the total assessment which shall be so determined and levied for any fiscal year is herein referred to as the "Annual Assessment"). The assessments provided for herein shall commence as to a Lot on the date that a Lot becomes an Improved Lot, with all Improved Lots being assessed equally. No Annual Assessment shall be assessed against any Lot owned by the Declarant. The Board of Directors shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall

be levied against each Lot, to the Owner of every Lot prior to the commencement of the fiscal year during which such Annual Assessment is to be paid. The amount of such Annual Assessment which shall be levied against each Lot shall be due and payable to the Association in such installments as the Board of Directors shall determine and shall be paid to the Association when due without further notice.

Section 4. Special Assessments. If for any reason, including non-payment of any assessments to the Association by the persons liable therefor, the budget adopted by the Board of Directors for any fiscal year shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Board of Directors shall determine that it is in the best interests of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Board of Directors shall have the authority to levy a special assessment against the Lots and the Owners thereof to raise such needed funds. Any special assessment levied by the Board of Directors pursuant to the provisions of this section shall be payable at such times and such installments as the Board of Directors shall determine. Each Lot shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this section; provided that in no event shall Declarant be obligated to pay any special assessment.

Section 5. Specific Assessments. The Board of Directors may levy specific assessments against individual Owners (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, or of any monument, wall, fence, landscaping, detention pond or other thing maintained by the Association, which is occasioned by the acts of individual Owners and not the result of ordinary wear and tear, (ii) for the payment of fines, penalties or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws, or any rules or regulations promulgated hereunder; or (iii) for any common expenses, other than expenses for the maintenance of the Common Areas, which benefit less than all of the Lots or which significantly disproportionately benefit all Lots (which expenses may be specially assessed equitably among all of the Lots benefited according to the benefit received); provided that in no event shall Declarant be obligated to pay any specific assessment. Without limiting the generality hereof, the Board of Directors, on behalf of the Association, shall have the right to contract with submetering companies for the submetering of water or any other common utilities or services to individual Lots and to pass the submetered costs therefor to the individual Owner(s) of each Lot as specific assessments. Failure of the Board of Directors 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 of Directors' right to exercise its authority under this section in the future with respect to any expenses.

Upon the establishment of a specific assessment under this section, the Board of Directors shall send written notice of the amount and due date of such specific assessment to the affected Owner(s) at least thirty (30) days prior to the date such specific assessment is due.

Section 6. Special Assessment for Capital Reserves. Upon the first transfer of title to an Improved Lot and upon each resale of an Improved Lot thereafter, there shall be levied against such Improved Lot and paid to the Association a special assessment in such amount as shall be determined by the Board of Directors in its reasonable discretion, which assessment shall not exceed one-half of the Annual Assessment against such Improved Lot. Declarant shall endeavor to collect such special assessment at the closing of the initial purchase of the Improved Lot; however, the failure to collect such special assessment at that time shall not excuse the obligation to make such payment.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association.

(a) In the event that any Member of the Association shall fail to pay, within ten (10) days after the date the same is due and payable, any annual, special or specific assessment, or any installment of any such assessments which is payable by him to the Association, or any charges, fees or other such sums which may be due to the Association, the entire amount of such assessment or sum, including the portion thereof which would otherwise be payable in installments, may be declared by the Board of Directors to be immediately due and payable in full to the Association. All such amounts so declared by the Board of Directors to be due and payable in full to the Association shall be secured by the lien of the Association on every Lot owned by the delinquent Member, which lien shall bind such Lot or Lots in the hands of the then Owner, and his heirs, devisees, successors and assigns. In

addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain his personal obligation and shall also pass to his successors in title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which said Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors in title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and successors in title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. To the fullest extent permitted by applicable law, the Board of Directors may suspend water, electricity, heat, air conditioning or cable television service paid for as part of the Annual Expenses. The utility services shall not be required to be restored until all judgments are paid in full and any reasonable utility provider charges or other reasonable costs incurred in suspending and restoring such services are paid in full, at which time the Association shall direct the utility provider to restore the service.

(b) All amounts which the Board of Directors shall declare to be due and payable pursuant to this section shall be subject to late fees in the amount of 10% of the sums owed or \$10.00, whichever is higher, and shall bear interest from the date of delinquency at the lower of the rate of ten (10%) percent per annum or the highest rate permitted by law. The Association may bring legal action against the Member of the Association personally obligated to pay the same, or foreclose its lien upon the Lot or Lots of such Member, in either of which events such Member shall also be liable to the Association for all costs and attorneys' fees which the Association shall incur in connection with the collection of such delinquent amounts, which costs and fees shall also be an assessment and a lien against the Lot and collectible as provided herein.

Section 8. Budget Deficits during Declarant Control Period. Declarant may advance funds to the Association sufficient to satisfy the deficit, if any, in any fiscal year between the actual operating expenses of the Association (exclusive of any allocation for capital reserves) and the annual and special assessments for such fiscal year. Such advances shall be evidenced by promissory notes from the Association in favor of the Declarant and shall be paid back to Declarant if and to the extent that sufficient funds are generated by assessments in future years until such time as Declarant no longer has the authority to appoint the directors and officers of the Association.

Section 9. Failure to Assess. The failure of the Board of Directors to fix the assessment amounts or to deliver to each Owner the assessment notice shall not be deemed a waiver, modification or release of any Owner of 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 until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

## **ARTICLE VII. ARCHITECTURAL CONTROL**

Section 1. Architectural Restrictions. No Exterior Structure or Improvement, as defined herein, shall be placed, constructed, erected, installed or made on any Lot or on or in any Limited Use Area unless such Exterior Structure or Improvement meets all square footage and other requirements that may be set forth in the Plats and the applicable zoning conditions and is in strict compliance with the provisions of this article.

Section 2. Architectural Control Committee. Responsibility for the review of all applications under this Article shall be handled by the Architectural Control Committee ("ACC"), the members of which need not be Members of the Association and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Association. The ACC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ACC in having any application reviewed by architects, engineers or other professionals.

The ACC shall have exclusive jurisdiction over all construction, alterations or additions on any portion of the Property and shall be the sole arbiter of applications and may withhold approval for any reason, including, without limitation, purely aesthetic considerations. The ACC shall have the right, but not the obligation, to promulgate design guidelines and standards for the Property in order to provide guidance to Owners and Builders

regarding the approval process, which guidelines and standards may be amended by the ACC at any time and from time to time. Compliance with such guidelines and standards shall not guarantee approval of any application.

Until the termination of the Development Period, Declarant retains the right to appoint all members of the ACC, who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board of Directors shall appoint the members of the ACC, who shall thereafter serve and may be removed in the Board of Director's discretion.

Section 3. Exterior Structure or Improvement. The term "Exterior Structure or Improvement" shall mean an exterior construction, alteration, addition or change of any nature whatsoever on a Lot or on or in any Limited Use Area [including but not limited to (i) a building, fence, wall, patio, playhouse, playground equipment, swimming pool, spa, Jacuzzi, or other structure, (ii) staking, clearing, excavation, grading, or filling of land, (iii) change in color, type or material of any existing improvement, (iv) planting or removal of landscaping materials (v) placement or installation of exterior lighting, statuary, flags, fountains and similar items, (vi) modification of the interior of a porch, deck, patio or similar portion of a structure which is visible from outside the Lot, or (vii) the addition of storm or screen doors or windows]. No Exterior Structure or Improvement shall be commenced, placed or maintained upon any Lot or on or in any Limited Use Area until complete and final plans and specifications setting forth the information hereinafter described shall have been submitted to and approved by the ACC as to the harmony of the exterior design and general quality with the existing standards of the improvements located on the other Lots, and as to location in relation to surrounding structures and topography.

Section 4. Approval Procedures. The plans and specifications which must be submitted to the ACC prior to the commencement of any such work upon any Lot or on or in any Limited Use Area, as hereinabove provided, shall contain at least the nature, kind, shape, height, materials, color, texture and location of such structure, alteration or landscaping and such other information as the ACC may reasonably request in order to render a decision. Notwithstanding the above, however, the ACC, by resolution, may exempt certain activities from the application and approval requirements of this Article, provided that such activities are undertaken in strict compliance with the requirements of such resolution.

In the event that the ACC fails to approve or disapprove any application within sixty (60) days after submission of all information and materials reasonably requested by the Association, the application shall be deemed approved.

The ACC shall, upon demand, furnish to any Member of the Association a certificate in writing signed by a member of the ACC, stating that any Exterior Structure or Improvement that has been approved and built in accordance with the provisions of this section is in compliance with the provisions of this section, and such certificate shall be conclusive as to whether the same is in such compliance.

Section 5. Construction Period. Unless otherwise agreed to in writing by the ACC, any Exterior Structure or Improvement must be commenced within 30 days after ACC approval of the plans and specifications for same. After commencement of construction, the Owner shall diligently continue construction to completion in a timely manner and within the time limits and in the manner specified by the ACC at the time the project is approved.

Section 6. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Section 7. Variance. The ACC, in its sole discretion, 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. No variance shall (i) be effective unless in writing; (ii) be contrary to this Declaration; or (iii) prevent the ACC from denying a variance in other circumstances.

Section 8. Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property only, and shall not create any duty to any Person. Neither the Declarant, the Association, the Board, nor the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, or for ensuring compliance with building codes and other governmental requirements or regulations. Neither Declarant, 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 or quality of approved construction on or modifications to any Lot. In all matters, the ACC and its members shall be defended and indemnified by the Association as provided in this Declaration and the Articles of Incorporation and Bylaws of the Association as though they were officers of the Association.

Section 9. Enforcement. Declarant, any member of the ACC, the Board, or the representatives of each, shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot or Limited Use Area to inspect for the purpose of ascertaining whether any Exterior Structure or Improvement is in violation of this Article. Any Exterior Structure or Improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request by the ACC, the Owner shall, at its own cost and expense, remove such structure or improvement and restore the Lot or Limited Use Area to substantially the same condition as existed prior to the nonconforming work. Upon the failure or refusal of any person to perform the restoration required herein, the ACC, or their authorized agents or employees, may, after fourteen (14) days' notice to such person, enter upon the property upon which such unauthorized work has been performed, and make such restoration as the ACC, in the exercise of its discretion, may deem necessary or advisable. Entry for such purposes and in compliance with this Section shall not constitute a trespass. The person upon whose Lot or Limited Use Area such restoration work shall have been so performed shall be personally liable to the Association for all direct and indirect costs which the Association shall incur in the performance of such restoration work, including without limitation attorneys' fees, and the liability for such cost shall be secured by all the liens, and shall be subject to the same means of collection, as the assessments provided for in this Declaration. Such costs shall be paid to the Association by the person liable for the same at the same time as the next due Annual Assessment payment, or at such earlier time, and in such installments, as the ACC shall determine.

Unless otherwise specified in writing by the ACC, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot or Limited Use Area, unless approval to modify any application has been obtained. In the event that any person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard, to enter upon the Lot or Limited Use Area and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a specific assessment pursuant to this Declaration.

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

Section 10. Declarant Exemption. Notwithstanding anything stated to the contrary herein, nothing contained in this Article shall be construed as prohibiting any construction, alteration, addition or removal by the Declarant upon any Lot or Limited Use Area while such Lot is owned by the Declarant. Any construction, alteration, addition or removal performed by the Declarant or, with Declarant's consent, by any Builder, upon any Lot or Limited Use Area while such Lot is owned by the Declarant or such Builder shall be exempt from the provisions of this Article.

## **ARTICLE VIII. RESTRICTIONS**

In order to provide for the maximum enjoyment of the Lots by all of the residents thereof and to provide protection for the value of the same, the use of the Lots shall be restricted to, and shall be only in accordance with, applicable zoning conditions and the following provisions:



Section 1. Use of Lots.

(a) Residential Use Only. All of the Lots, attached or detached, shall be restricted exclusively to single-family residential use. No Lot shall at any time be used for any commercial, business or professional purpose. Notwithstanding the foregoing, however, nothing set forth in this section shall prohibit: (i) the Declarant or a Builder from conducting such sales, leasing and promotional activities on any Lot as Declarant shall determine; or (ii) the Owner of any Lot from using a portion of a building located on such Lot as an office, provided that such use does not create regular customer, client or employee traffic to and from such Lot and no sign, logo, symbol or nameplate identifying such business is displayed anywhere on such Lot.

(b) Number of Occupants. The maximum number of Occupants of an Improved Lot shall be limited to two (2) people multiplied by the number of bedrooms in the Improved Lot. Upon written application, the Board may grant variances to this restriction if necessary to comply with any applicable provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto.

If an Owner of a Lot is an entity that is not a natural person, the entity shall designate in writing to the Board the name(s) of the natural person(s) who will occupy the Lot. The designated natural person(s) may not be changed more frequently than once every six (6) months without the express written consent of the Board as determined in the Board's sole discretion.

Section 2. Prohibited Activities. No noxious, offensive, unsightly or unkempt activity shall be conducted on any Lot or Limited Use Area. Each Owner and Occupant of any Lot, his family, tenants, guests and invitees, shall refrain from any act or use of his property which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other resident or residents of any other Lot. Storage or placement of furniture, potted plants, fixtures, appliances, machinery, bicycles, towels, clotheslines, equipment, or other goods or chattels on any Lot or Limited Use Area which is visible from outside of the Lot is prohibited except as specifically permitted in this Declaration. No nuisance shall be permitted to exist upon any Lot or Limited Use Area. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot or Limited Use Area, or any portion thereof.

Section 3. Animals. No Owner or Occupant may keep any animal on any portion of the Property except as expressly permitted in this section. No agricultural animals may be kept on any Lot, and no animals, including birds, insects, and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes.

No structure for the care, housing, or confinement of any animal shall be constructed or maintained on any art of the Common Area, including any Limited Use Area, without prior written ACC approval.

Animals may not be left unattended outdoors or kept unattended outdoors, including on or in any deck. Animals must be kept on a leash and be under the physical control of a responsible person at all times while outdoors. Any feces left upon the Common Areas by an animal must be immediately removed by the owner of the animal or the person responsible for the animal.

No animal determined to be dangerous, in the Board of Directors' sole and absolute discretion, may be brought onto or kept on the Property at any time. The Board of Directors may have removed by the local authorities, without notice to the animal's owner, any animal that presents an immediate danger to the health, safety or property of any resident.

Each Owner and Occupant who keeps or maintains an animal on the Property shall be deemed to have agreed to indemnify and hold the Association and its directors, officers and agents harmless from any loss, claim or liability of any kind whatsoever arising by reason of such animal.

Section 4. Antennae; Aerials; Satellite Dishes. No transmission antenna of any kind may be erected anywhere on a Lot or Limited Use Area without the prior written consent of the ACC. No direct broadcast satellite

(DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one (1) meter in diameter may be placed, allowed or maintained upon any Lot or Limited Use Area. A DBS or MMDS antenna one (1) meter or less in diameter or television broadcast service antenna may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association as authorized by the FCC, as both may be amended from time to time. HAM radios, two way radios and other hobby or professional radio communication transmission equipment are prohibited.

Declarant or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus of any size for a master antenna, cable, or other communication system for the benefit of all or a portion of the Property.

Section 5. Drainage. The catch basins, drainage swales, storm sewers, storm drains and other drainage facilities are for the purpose of controlling the natural flow of water only. No obstruction or debris shall be placed or allowed to remain in these areas. No Owner may obstruct or alter the drainage flows established by Declarant without prior written approval in accordance with the architectural control provisions of the prior Article.

Section 6. Firearms and Fireworks. The display or discharge of firearms or fireworks on the outside the boundaries of a Lot is prohibited, except for (i) the display of lawful firearms by law enforcement officers and (ii) the limited purpose of transporting lawful firearms to and from a Lot. The term "firearms" includes BB guns, air rifles, pellet guns and other firearms of any type and size. The term "fireworks" shall mean those items listed in O.C.G.A. § 25-10-1, as amended.

Section 7. Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited unless approved in writing by the Board of Directors.

Section 8. Grills and Outdoor Cooking Devices. The use of grills, smoker and outdoor cooking equipment shall only be permitted in accordance with (i) municipal, county and state ordinances and laws, (ii) the requirements, if any, of the Association's insurance policies, and (iii) any rules promulgated by the Association with respect thereto. Each Owner and Occupant who keeps a grill or other outdoor cooking device on the Property agrees to indemnify and hold the Association and its directors, officers and agents harmless from any loss, claim or liability of any kind whatsoever arising by reason of such grill or cooking device.

Section 9. Leasing. In order to protect the equity of the individual Lot Owners and to preserve the character of the Property as a community of predominantly owner-occupied homes, the leasing of Improved Lots shall be governed by the restrictions imposed by this Section. **Except as provided herein, the leasing of an Improved Lot shall be prohibited.**

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

(b) General. Any Owner of an Improved Lot may apply in writing to the Board to be a "Leasable Lot" (which shall mean an Improved Lot authorized to be leased). Upon approval of such written application, the Improved Lot shall become a Leasable Lot, so long as no more than twenty percent (20%) of the Improved Lots are designated as Leasable Lots at any one time. If the designation of an Improved Lot as a Leasable Lot would result in more than twenty percent (20%) of the Improved Lots being designated as Leasable Lots, such Improved Lots shall be placed at the end of a waiting list to be a Leasable Lots. At such times as less than twenty percent (20%) of the Improved Lots are Leasable Lots, the Board shall notify the Owner of the Improved Lot at the top of the waiting list that it has become a Leasable Lot, and such Owner shall have ninety (90) days within which to lease the Improved Lot or it shall automatically revert to an Improved Lot that may not be leased. Any Leasable Lot shall automatically convert to an Improved Lot without the ability to lease if the Improved Lot is not subject to an approved lease for ninety (90) or more consecutive days.

(c) Undue Hardship. In addition to the provisions of subparagraph (b) above, so long as no more than twenty-five percent (25%) of all Improved Lots are leased, the Board shall be empowered to allow reasonable leasing of an Improved Lot upon application in accordance with this Paragraph to avoid undue hardship, including, but not limited to the following situations: (1) an Owner must relocate his or her residence outside the Atlanta metropolitan area and cannot, within six (6) months from the date that the Improved Lot was placed on the market, sell the Improved Lot except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner dies and the Improved Lot is being administered by his or her estate; and (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Improved Lot, in which case the Owner must reapply every year for renewal of the hardship exception. Those Owners who have complied with this subparagraph, have demonstrated that the inability to lease their Improved Lots would result in undue hardship, and have obtained the requisite written Board approval may lease their Improved Lots for such duration as the Board reasonably determines is necessary to prevent undue hardship.

Any Owner who believes that he or she must lease his or her Improved Lot to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application. Any transaction which does not comply with this Paragraph shall be voidable at the Board's option.

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

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

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

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

(aa) Compliance with Declaration, Bylaws, and Rules and Regulations. Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms

hereof. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Leasable Lot.

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

(e) Applicability of this Section. This Section on Leasing shall not apply to any leasing transaction entered into by the Declarant, the Association, any Owner who acquired its Lot under a Deed Under Power of Sale or the holder of any first Mortgage on an Improved Lot who becomes the Owner of an Improved Lot through foreclosure or any other means to the satisfaction of the indebtedness secured by such Mortgage.

Section 10. Signs. No sign of any kind or character shall be erected on any portion of any Lot, or displayed to the public on any portion of any Lot, without the prior written consent of the Board of Directors, except for customary name and address signs, one customary "for sale" sign advertising a Lot for sale and any sign required by legal proceedings. The restriction herein stated shall include the prohibition of placement of any sign within a building located on any Lot in a location from which the same shall be visible from the outside and the placement of any sign in or upon any motor vehicle.

Section 11. Stoops, Driveways and Decks. Grills, patio furniture, potted plants and other items may be permitted on such areas, subject to local ordinances and any rules promulgated by the Association with respect thereto. Detached storage buildings, sheds or animal pens are prohibited.

Section 12. Trash Containers and Collection. No garbage or trash shall be placed or kept on the Property except in sealed bags placed in proper containers of a type, size and style which are approved by the Board of Directors or as required by the applicable governing jurisdiction, and subject to rules promulgated by the Association. No person shall burn rubbish, garbage or any other form of solid waste on any Lot or on Common Areas or within the right of way of any street within the Property. All garbage receptacles shall be stored out of sight at all times except on the days on which trash is removed by the designated garbage-collecting agency.

Section 13. Vehicles and Parking. The Association shall have the right to promulgate rules regulating the use of all streets and parking on the Property. The term "vehicles" as used in this section shall include without limitation automobiles, trucks, boats, watercraft, trailers, motorcycles, scooters, campers, vans, mobile homes and recreational vehicles. The term "commercial vehicle" shall include but not be limited to any vehicle that is oversized and any type of vehicle with advertising or lettering.

No vehicle may be left upon any portion of the Property except upon a driveway, a designated parking or loading area or within a garage. All Owner and Occupant vehicles must be kept and stored when not in use within the Lot's garage space; provided, however, that if the Owner or Occupant of a Lot owns or uses more vehicles than there are garage spaces in the Lot, the excess vehicle or vehicles may be parked in the Lot's Driveway Area. Each Improved Lot's Driveway Area is designated as a Limited Use Area and may only be used by the temporary guests and invitees of the Owner or Occupants of such Improved Lot. Only licensed and operable automobiles and non-commercial pickup trucks may be parked on a Driveway Area, with the exception of emergency vehicle repair and commercial vehicles that are temporarily parked for the purpose of servicing a Lot or the Property. All vehicles parked on a Driveway Area shall be parked in such a manner that the vehicle does not extend past the Driveway

Area into the street. No vehicle shall be parked for periods exceeding a week on any Driveway Area without being moved.

Garage doors must remain closed at all times except for entry and exit by vehicles and except for such periods as are necessary for the conduct of homeowner related maintenance activities. Any and all car maintenance (other than washing and waxing of cars) must take place within the garage.

If any vehicle is parked on any portion of the Property in violation of this section or in violation of the Association's rules and regulations, the Board, in accordance with the requirements of applicable law, may cause the towing or booting of the vehicle and 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 or booting activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

Section 14. Window Air-Conditioners. No air-conditioner shall be installed in any window of any building located on any Lot, nor shall any air-conditioner be installed on any building located on any Lot so that the same protrudes through any exterior wall of such building.

Section 15. Window Treatments. Except as may be otherwise approved in accordance with the Architectural Control provisions contained in the previous Article, all window treatments visible from the outside of a Lot shall be white or off-white in color. No bed sheets, newspaper, tin foil, or similar materials may be used as window treatments.

Section 16. No Subdivision of Lots or Timesharing. No Lot may be further subdivided into any smaller Lot. No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 17. No Combination of Lots without Approval. Contiguous Lots may not be combined together without the prior written consent of the Board of Directors. In the event that the Board of Directors does approve such a combination, such combination shall thereafter be a single Lot for all purposes of this Declaration, except that notwithstanding the foregoing, the amount of assessments for which such single Lot shall be thereafter liable shall be equal to the total assessments for which all of the Lots which were so combined would have been liable had such combination not taken place.

Section 18. Development Period. During the Development Period, no amendment to or modification of any use restrictions, rules or design guidelines shall be adopted without the prior written consent and approval of Declarant. The Association shall not exercise any authority that would impair the rights of the Declarant under this Declaration or interfere with Declarant's development of, construction on, or marketing of any portion of the Property or the Additional Property, or diminish the level of services being provided by the Association.

Section 19. Interpretation. In all cases, the covenants and restrictions herein contained shall be construed and interpreted in a manner which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development and maintenance herein set forth. Subject to the terms of this Article and the Board of Directors' duty to exercise business judgment and reasonableness, the Board of Directors may modify, cancel, limit, create exceptions to, or expand the restrictions contained herein and may create, modify and enforce reasonable rules governing the use of the Property consistent with the law and with other provisions in this Declaration. The Board of Directors shall send notice to all Owners concerning any new or amended restrictions or rules prior to the date that such restrictions or rules go into effect. For this purpose, notice may be sent to each Owner by U.S. mail, hand delivery, electronic telecommunication or publication in a community notice or newsletter delivered or mailed to each Owner.

## ARTICLE IX. MAINTENANCE RESPONSIBILITIES

Section 1. Association's Maintenance Responsibility. Except as may be specifically provided otherwise below, the Association shall maintain the Area of Common Responsibility (whether or not constituting Common Areas), including: (i) all entry features to the Property, including any lighting and irrigation systems serving the entry features; (ii) all streets, parking areas, and sidewalks; (iii) all Limited Use Areas; (iv) the roofs, gutters and exterior maintenance of each of the Improved Lots; (v) the exterior surfaces of windows, window frames, doors and door frames; (vi) all landscaping within and on the Property; (vii) all storm water detention or drainage facilities serving the Property; and (viii) termite and wood infestation treatment and bond.

The Association may be relieved of all or any portion of its maintenance responsibilities to the extent that such property is dedicated to any local, state or federal government or quasi-governmental entity and said entity accepts the responsibility for maintenance. In the event of any such assumption, assignment or dedication, however, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board of Directors determines that such maintenance is desirable or necessary to maintain the Community Wide Standards.

In the event that the Association determines that any maintenance which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or the Occupant, family, guest, invitee or lessee of an Owner, then the Association may perform such maintenance and all costs thereof may be assessed against the Owner as a specific assessment.

The Board of Directors, in its sole discretion, may leave portions of the Property as undisturbed natural areas and may change the landscaping on the Area of Common Responsibility at any time and from time to time, including the adding or modifying of landscaping improvements, such as the planting of seasonal flowers.

Section 2. Owner Responsibility. Except to the extent that responsibility is assumed by the Association in Section 1 above, each Owner shall maintain and keep in good repair all structures and improvements on the Lot, (including but not limited to the HVAC and other systems serving an Improved Lot and all portions of windows, screens, glass, and doors not specifically listed in Section 1 above) in a manner consistent with the Community-Wide Standards, this Declaration, and all other governing documents. Owner shall keep the Lot and all Limited Use Areas in neat and clean condition free from all litter, trash and refuse and comply with all governmental health and police regulations. The Board of Directors shall have the right, upon resolution, to require all or any Owner to perform such work or acts with regard to those items which are the Owner's maintenance responsibility hereunder that will, in the Board's sole discretion, decrease the possibility of fire or other damage to a Lot, reduce the insurance premiums paid by the Association or otherwise assist the Board in obtaining or maintaining insurance coverage, provide that the cost of such work does not exceed Three Hundred Dollars (\$300) per Lot in any twelve (12) month period. This right includes, by way of example and not by limitation, the right to require Owners to install and maintain smoke detectors and the right to require Owners to certify that they have checked and, if necessary, replace the batteries in their smoke detectors.

In the event the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance of items for which such Owner is responsible, the Association shall, except in emergency situations, give the Owner written notice of the Association's intent to provide such necessary maintenance at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, or in the event that such maintenance is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions herein, the Association may provide such maintenance and all costs thereof shall be assessed against the Owner as a specific assessment.

Section 3. Party Walls. Each wall built as part of the original construction of the Improved Lots which serves and/or separates any two adjoining Lots shall constitute a party facility 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 which serves and separates two home interiors shall be shared by the Owners who make use of such party wall

in equal proportions. If a party wall which serves and separates two home interiors is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the party wall may restore it, and the other Owner who is benefited by the party wall 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.

Section 4. Damage or Destruction. In the event of the occurrence of any damage to or destruction of any improvements on a Lot, such damage or destruction shall be repaired or rebuilt, as applicable, in all events. All repair, reconstruction or rebuilding of the improvements shall be substantially in accordance with the plans and specifications for such damaged or destroyed Improved Lot immediately prior to the occurrence of such damage, or in accordance with such differing plans and specifications as are approved for such purpose by the Owner of such Lot and the Board of Directors. The Owner of such damaged or destroyed Improved Lot shall be responsible for ensuring that the work of repairing, reconstructing or rebuilding a damaged or destroyed Improved Lot is completed as soon after the occurrence of such damage or destruction as is reasonably practicable, at no cost or expense to the Association. The Owner shall pay any costs that are not covered by insurance proceeds.

## ARTICLE X. INSURANCE

### Section I. Insurance on Common Areas.

(a) The Association shall obtain and maintain property insurance on all insurable improvements located on the Common Areas. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from a covered peril. The Board of Directors shall obtain a commercial liability policy with a combined single limit of at least One Million Dollars (\$1,000,000.00) per occurrence applicable to the Common Areas covering the Association and its Members and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on all persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association and shall run to the benefit of the Association, the Board of Directors, all officers, agents and employees of the Association, the Owners, and their respective Mortgagees, and all other persons entitled to occupy any Improved Lot, as their interests may appear, and the cost of such insurance shall be assessed as part of the Annual Assessment against the Owners. The Association's insurance policy(ies) 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 equals at least the replacement cost of the insured property.

All policies of insurance shall be written with a company licensed to do business in the State of Georgia, and, if reasonably available, shall carry a "B+" or better rating from A.M. Best Company. 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. The Board of Directors shall utilize reasonable efforts to include the following provisions in the policy(ies) that the Association obtains:

(a) A waiver of the insurer's rights of subrogation of any claims against directors, officers, employees, the managing agent, the individual Owners, Occupants, and their respective household members.

(b) A provision that no insurance coverage shall be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

(c) A provision that no policy may be cancelled, invalidated, or suspended on account of the conduct of one or more of the individual Owners, or their respective families, tenants, agents and guests, or on account of the acts of any director, officers, employee or agent of the Association or its manager, without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

(d) With respect to all liability insurance, cross-liability endorsements to cover liability of the Association to an individual Owner.

(e) A provision that "other insurance" clauses in such policy(ies) shall exclude from consideration policies obtained by individual Owners.

(f) With respect to the property insurance, an inflation guard endorsement.

Additionally, the Association shall obtain such insurance coverage as is necessary to satisfy the requirements of state law, the Federal Home Loan Mortgage Corporation, Fannie Mae, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, if and to the extent applicable to the Property.

Nothing contained herein requires the Association to make a claim under the insurance policies upon the occurrence of an insured event. The Board of Directors has the right to exercise reasonable business judgment in all insurance decisions.

Section 2. Individual Insurance. Each Owner, by virtue of taking title to a Lot subject to this Declaration, acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots. Each Owner covenants and agrees with all other Owners and with the Association that each Owner will maintain at all times, at his own expense, property insurance insuring all insurable structures and improvements on his Lot and all Limited Use Areas appurtenant thereto, as well as a liability policy covering damage or injury occurring on a Lot. The property insurance shall be for the benefit of the Owner and his mortgagee, as their interests may appear, shall name the Association as an additional insured, shall cover loss or damage by fire and other perils commonly insured under an all-risk policy, if reasonably available, and shall cover the full replacement cost of any repair or reconstruction of a covered property in the event of damage or destruction from any covered peril. All policies shall be written with a company licensed to do business in the State of Georgia, and, if reasonably available, shall carry a "B+" or better rating from A. M. Best Company. The Board of Directors has the right, but not the obligation, to require the Owner to furnish either a certificate of insurance or a copy of such insurance policy or policies to the Association within ten (10) days after the date of such request. In the event that any such Owner fails to obtain insurance as required by this section, the Association has the right, but not the obligation, to purchase such insurance on behalf of the Owner and assess the cost thereof to the Owner, to be collected in the manner provided for collection of assessments herein

Section 3. Additional Insurance Provisions. Any insurance proceeds payable to the Owner of a Lot on which there is a Mortgagee endorsement shall be disbursed jointly to such Lot Owner and the Mortgagee and shall be used for the repair or rebuilding of the improvements on the Lot. This is a covenant for the benefit of any Owner or Mortgagee and may be enforced by any Owner or Mortgagee.

## ARTICLE XI. MORTGAGEE PROVISIONS

Section 1. Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "Eligible Holder"), will be entitled to timely written notice of: (i) any condemnation loss of any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder; (ii) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Holder



where such delinquency has continued for a period of sixty (60) days; (iii) any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (iv) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

Section 2. Audit. Upon written request of an Eligible Holder and upon payment of all necessary costs, such Eligible Holder shall be entitled to receive a copy of audited financial statements of the Association within 30 days of the date of the request.

Section 3. No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards.

Section 4. Failure of Mortgagee to Respond. Any Mortgagee other than a Mortgagee of Declarant who receives a written request from the Board of Directors to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

## ARTICLE XII. AMENDMENT

Until the termination of the Development Period, the Declaration may be amended only by Declarant, who may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rules or regulation or judicial determination which shall be in conflict therewith, (b) enable any reputable title insurance company to issue title insurance coverage with respect to the Lots, (c) enable an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation) to make, purchase, insure or guarantee mortgage loans on the Lots, (d) an amendment is necessary to enable any governmental agency or private insurance company, including but not limited to the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee mortgage loans on the Lots. However, any such amendment shall not adversely affect the title to any Owner's Lot unless such Lot Owner shall consent thereto in writing,

After the termination of the Development Period, this Declaration may be amended only upon the affirmative vote or written consent, or any combination thereof, of 2/3 of the Lot Owners. Notwithstanding the foregoing, after the termination of the Development Period, the Board of Directors, without the vote of the members, may amend this Declaration for the sole purpose of electing to be governed by the provisions of the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.*

Any amendment shall become effective upon the recording with the County Clerk of the instrument evidencing such change unless a later effective date is specified therein. If an Owner consents to an amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any procedural challenge to an amendment must be made within six months of the recording of the amendment or such amendment shall be presumed to have been validly adopted.

Every Owner, by taking record title to a Lot, and each holder of a Mortgage upon any portion of any Lot, by acceptance of such Mortgage, hereby agrees that the terms, provisions, covenants and restrictions of this Declaration may be amended as provided herein.

## ARTICLE XIII. TRANSFER OF LOTS

An Owner intending to transfer or sell a Lot shall give written notice to the Board of Directors of such intention within seven (7) days after execution of the purchase agreement (in the case of the sale of a Lot) or the transfer document (in the case of the conveyance of a Lot without a sale). Any transferring or selling Owner shall (i) furnish to the Board of Directors, as part of the notice, the name and address of the intended grantee and such other information as the Board of Directors may reasonably require, (ii) deliver to the intended grantee a copy of this Declaration and the Bylaws, and (iii) notify the intended grantee of the special assessment for working capital reserve assessed upon each transfer of an Improved Lot provided for in Article VI, Section 6 of this Declaration.

#### ARTICLE XIV. SECURITY

The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety in the community; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Lot Owner. Neither Declarant nor the Association shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken.

#### ARTICLE XV. DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

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

(a) Claims. Unless specifically exempted below, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to the interpretation, application, or enforcement of the Declaration, Articles of Incorporation and Bylaws (the "Governing Documents") or the rights, obligations, and duties of any Bound Party under this Declaration. The following shall not constitute a Claim and shall not be subject to the provisions of this Section:

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

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

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

(c) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(d) Binding Arbitration. In the event the Claim cannot be resolved by Claimant and Respondent(s) within (thirty) 30 days after the date of the above notice (or within such other period as may be agreed upon by the parties), then Claimant shall have one (1) year from the date the claim arose to give written notice to Respondent(s) and the Board of the Claimant's submission of the Claim to binding arbitration (the "Notice of Arbitration"), which arbitration shall be the sole remedy with respect to a Claim, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may be reasonably necessary to comply with the above obligation to attempt to resolve the Claim by good faith negotiation. In the event the parties do not agree to toll the statute of limitations, if the Claim is not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided that nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

(e) Additional Rules for Binding Arbitration.

(i) Any arbitration pursuant to this Agreement shall be conducted by one (1) arbitrator, and the arbitration proceeding shall be held in Atlanta, Georgia. Claimant and Respondent(s) shall mutually select the arbitrator, or if they are unable to agree upon an arbitrator within twenty (20) days of the sending of the Notice of Arbitration, the arbitrator shall be chosen in accordance with the American Arbitration Association rules from a panel of individuals, each of whom shall be required to have at least ten (10) years of commercial or residential real estate experience in the Southeastern United States. The administrator of the arbitration shall be the American Arbitration Association.

(ii) In all cases in which an arbitrator is required to render a decision under this Section, each party to the dispute shall submit to the arbitrator, within twenty (20) days of his selection, its preliminary proposal for resolution of the Dispute, and each party shall deliver a copy of its preliminary proposal to the other party(ies). Each party shall then have a period of ten (10) days to submit comments on the other party's proposal to the other party(ies). Within seven (7) days after the expiration of such ten (10) day period, each of the parties shall submit to the arbitrator its final proposal for resolution of the Claim. The arbitrator shall be required to make a final judgment as the sole resolution of the Dispute within ten (10) days of receipt of each party's final proposal.

(iii) Each party agrees that it shall not have a remedy of punitive or exemplary damages against the other in any Claim and hereby waives any right or claim to punitive or exemplary damages it may have now or which may arise in the future in connection with any Claim.

(iv) This Section is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Georgia. The arbitration award shall be final, binding and conclusive and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent under the laws of the State of Georgia.

(v) The party asserting the claim shall be responsible for all filing fees. All other fees and costs associated with the arbitration proceeding shall be determined by the arbitrator in accordance with the American Arbitration Association rules.

(f) Consensus for Association Litigation. Except as provided in this Section entitled "Dispute Resolution and Limitation on Litigation", the Association shall not commence a judicial or administrative proceeding without first providing written notice of such proposed action to each Member and obtaining the approval of at least seventy-five percent (75%) of the Members. This Section shall not apply, however, to (i) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (ii) the collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such instrument is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

**ARTICLE XVI.  
MISCELLANEOUS**

Section 1. Failure of Enforcement. In the event that the Association shall fail to enforce the compliance with any of the provisions of this Declaration by the Owner of any Lot, then the Owner of any other Lot shall have the right to file an action in the Superior Court of the county where the Property is located for an order from such Court requiring that the Association enforce such compliance; provided, however, in no event shall the Board of Directors, or any officer of the Association, or any of their agents, be personally liable to anyone on account of their failure to enforce any of the terms, provisions or restrictions set forth in this Declaration.

Section 2. No Waivers. In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision, or agreement. The acceptance of performance of anything required to be performed with knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

Section 3. Duration. This Declaration, and all of the terms, easements, provisions, liens, charges, restrictions and covenants set forth herein, shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from and after the date this Declaration is recorded, after which time such covenants and restrictions shall be automatically extended for successive periods of twenty (20) years until the recordation of an instrument of termination within two (2) years of the expiration of the initial twenty-year period or any extension thereof, such instrument having been executed by a minimum of fifty-one percent of the record Owners of the Lots.

Section 4. Notices. Any notice required or permitted to be sent to any Member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the Member to whom it is intended, at the address which such Member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of the Lot owned by such Member. The date of service shall be the date of mailing. The address of Declarant or the Association shall be the address of its respective registered agent on file with the Secretary of State of Georgia. The date of service shall be the date shown on the return receipt. Rejection or other refusal to accept shall be deemed to be receipt of the notice sent.

Section 5. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof 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 6. Successors to Declarant. In no event shall any person or other entity succeeding to the interest of the Declarant by operation of law or through purchase of the Declarant's interest in all or any portion of the Property at foreclosure, sale under power or by deed in lieu of foreclosure, be liable for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of the Declarant.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officers on the day and year set forth below.

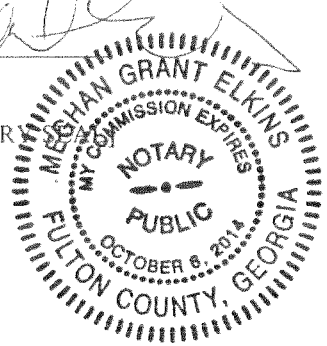
Signed, sealed and delivered  
in the presence of:

**RES-GA SHERIDAN, LLC**  
a Florida limited liability company

*[Handwritten Signature]*  
\_\_\_\_\_  
Witness

*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public

[NOTAR



By: Multibank 2009-I RES-ADC Venture, LLC  
a Delaware limited liability company,  
its Sole Member

By: RL RES 2009-I Investments, LLC  
a Delaware limited liability company,  
its Manager

By: Rialto Capital Advisors, LLC  
a Delaware limited liability company,  
its Attorney-in-Fact

By: \_\_\_\_\_ (SEAL)  
Matt Shulman, Authorized Signatory

By: *[Handwritten Signature]* (SEAL)  
Todd Terwilliger, Authorized Signatory

**EXHIBIT "A-1"**

**RES LEGAL DESCRIPTION**

All that tract or parcel of land lying and being in Land Lot 100, 17th District, Fulton County, Georgia and being more particularly described as follows:

Beginning for the same at a ½ inch rebar found on the Southerly Right-of-Way Line of Delmont Drive, (an apparent 50 foot wide right-of-way), said point being also 211 feet +/- East from the intersection with the Easterly right-of-way Line of Peachtree Road; thence leaving said Point of Beginning and running with the said line of Delmont Drive

1. South 87° 40' 17" East, 224.96 feet to a ½ inch rebar found; thence, leaving the aforesaid line of Delmont Drive and running with the property now or formerly owned by Fifty Five Delmont Condominiums as recorded among the Land Records of Fulton County, Georgia in Plat Book 5, Page 34;
2. South 04° 01' 56" West, 102.45 feet; thence, running
3. North 86° 18' 29" West, 224.29 feet; thence, running with the property now or formerly owned by The Whitney, LLC as recorded among the aforesaid Land Records in Deed Book 28778, Page 137; thence
4. North 03° 41' 39" East, 97.10 feet to the Point of Beginning, containing 22,408 square feet or 0.5144 of an acre of land, more or less.

**LESS AND EXCEPT:**

All that tract of parcel of land lying and being in Land Lot 100, 17<sup>th</sup> District, Fulton County, Georgia and being Lot 14, 58 Sheridan Subdivision, Phase 1, as per plat recorded in Plat Book 331, Page 44, Fulton County records, said plat being incorporated herein by reference thereto.

**EXHIBIT "A-2"**

**KINGSMAN LEGAL DESCRIPTION**

All that tract of parcel of land lying and being in Land Lot 100, 17<sup>th</sup> District, Fulton County, Georgia and being Lot 14, 58 Sheridan Subdivision, Phase 1, as per plat recorded in Plat Book 331, Page 44, Fulton County records, said plat being incorporated herein by reference thereto.

EXHIBIT "A-3"

ATLAS LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 100, 17<sup>th</sup> District, Fulton County, Georgia and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING, commence at a ½ inch rebar found on the southerly right-of-way line of Delmont Drive (an apparent 50 feet wide right-of-way), said point being also 211 feet +/- east from the intersection with the easterly right-of-way line of Peachtree Road; thence leaving said point and the said line of Delmont Drive and running with the property now or formerly owned by The Whitney, LLC, as recorded among the Land Records of Fulton County, Georgia in Deed Book 28778, Page 137, south 03 degrees 41 minutes 39 seconds west, 97.10 feet; thence running south 86 degrees 18 minutes 29 seconds east, 95.76 feet to the TRUE POINT OF BEGINNING of the herein described tract or parcel of land; thence leaving the said POINT OF BEGINNING and running south 86 degrees 18 minutes 29 seconds east, 128.52 feet; thence running with the property now or formerly owned by Fifty Five Delmont Condominiums as recorded among the aforesaid Land Records in Plat Book 5, Page 24, south 04 degrees 01 minute 56 seconds west, 102.75 feet to an iron pin found; thence running with the property now or formerly owned by Sheridan Manor Condominium – Lyle Kleinhns as recorded among the aforesaid Land Records in Plat Book 13, Page 16, south 05 degrees 34 minutes 21 seconds west,

220.30 feet to a PK nail set on the northerly right-of-way line of Sheridan Drive (an apparent 50 feet wide right-of-way); thence running with the said line of Sheridan Drive, north 77 degrees 11 minutes 00 seconds west, 75.13 feet to a 1 inch crimp top pipe found; thence 63.97 feet along the arc of a curve deflecting to the right, having a radius of 875.00 feet and a chord bearing and distance of north 72 degrees 04 minutes 54 seconds west, 63.96 feet; thence leaving the aforesaid line of Sheridan Drive and running north 19 degrees 01 minutes 50 seconds east, 31.64 feet; thence 53.54 feet along the arc of a curve deflecting to the left, having a radius of 200.00 feet and a chord bearing and distance of north 11 degrees 21 minutes 40 seconds east, 53.38 feet; thence north 03 degrees 41 minutes 31 seconds east, 211.88 feet to the POINT OF BEGINNING, containing 39,797 square feet or 0.9136 acres of land, more or less.



EXHIBIT "B"

BYLAWS

OF

58 SHERIDAN TOWNHOME ASSOCIATION, INC.

**Article 1. Name and Definitions**

Section 1. Name. The name of the corporation is 58 Sheridan Townhome Association, Inc. (the "Association"), a Georgia non-profit corporation organized in accordance with the Articles of Incorporation of the Association and the Declaration of Covenants, Restrictions and Easements for 58 Sheridan Townhomes, recorded in the Fulton County, Georgia land records (as may be amended, the "Declaration").

Section 2. Definitions. The term "Nonprofit Code" as used herein shall mean the Georgia Nonprofit Corporation Code, O.C.G.A. 14-3-101, *et seq.*, as amended. The other capitalized terms used herein that are not defined herein shall have the meanings specified in the Declaration. All terms not defined herein or in the Declaration shall have their generally accepted meanings.

**Article 2. Association Membership and Voting**

Section 1. Membership. There is one class of membership. Declarant, as the Owner of the Lots being created by the Declaration, shall initially be the sole Member of the Association. An Owner of a Lot shall automatically become a Member of the Association upon taking title to the Lot and shall remain a Member for the entire period of ownership. Membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of that Lot and may be transferred only in connection with the transfer of title.

Section 2. Multiple Owners. In the event that title to a Lot is held by more than one (1) Person, the Membership shall be shared in the same proportion as the title, but there shall be only one (1) Membership and one (1) vote per Lot.

Section 3. Entity Members. In the event a Member is a limited liability company, corporation, partnership, trust, or other legal entity that is not a natural person, then any natural person who is a manager, officer, director, partner, beneficiary or other designated agent of such Member shall be eligible to represent such Member in the affairs of the Association by providing evidence of authority to the Secretary of the Association in writing. Such natural person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity which is the Member, 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 4. Voting. Each Lot shall be entitled to one (1) equal vote. When more than one (1) Person owns a Lot, the vote for such Lot shall be exercised as the co-owners determine between or among themselves, provided that no more than one (1) vote may be cast with respect to any Lot. If only one (1) co-owner attempts to cast the vote for a Lot, it shall be conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such Lot. In the event of an attempt by more than one (1) Person to cast such vote, the Lot's vote shall be suspended and shall not be counted.

Section 5. Eligibility. No Member shall be eligible to vote or to be elected to the Board of Directors if such Member had its voting rights suspended. No Member whose voting rights have been suspended shall be counted as an eligible vote for purposes of establishing a quorum, establishing a Majority of the Association or for any other purpose.

### **Article 3. Association Meetings**

Section 1. Annual Meetings. The regular annual meeting of the Members shall be held during the 60-day period immediately preceding the last day of each fiscal year, with the date, hour, and place to be set by the Board of Directors. At the annual meeting, comprehensive reports of the affairs, finances, and budget projections of the Association shall be made to the Members.

Section 2. Special Meetings. Special meetings of the Members may be called for any purpose at any time by the President, or upon written petition of at least twenty-five (25%) percent of the Members. 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 call a special meeting for the purpose stated in the petition, and the Secretary shall send, within thirty (30) days after the date the petition is submitted to the Secretary, notice of the meeting in accordance with these Bylaws. If notice is not given within such time period, any person signing the petition may set the time and place of the meeting and give notice of the meeting in accordance with these Bylaws. Only those matters that are within the purpose or purposes described in the meeting notice may be conducted at the special meeting unless objection thereto is waived as set forth below.

Section 3. Notice of Meetings. It shall be the duty of the Secretary to mail or deliver to each Member a notice of each annual or special meeting of the Association at least twenty-one (21) days prior to each annual meeting and at least seven (7) days prior to each special meeting. The notice shall state the time, place and purpose of the meeting. The notice shall be delivered personally, sent by United States mail, postage prepaid, statutory overnight delivery, or issued electronically in accordance with the Nonprofit Code to all Members at such address or addresses as any of them may have designated in writing to the Secretary or, if no other address has been so designated, at the address of their respective Lots. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered proper service of notice.

Section 4. Place of Meeting. Meetings of the Association shall be held at the principal office of the Association or at any other suitable place as may be designated by the Board.

Section 5. Waiver of Notice. A Member may, in writing or by electronic transmission, waive notice of any meeting of the Members, either before or after such meeting. A Member's attendance at a meeting (in person or by proxy) waives objection to lack of notice or defective notice of the meeting unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting. A Member's attendance at a meeting further waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

Section 6. Quorum. A quorum is composed of those Members attending a meeting or voting on a matter in person or by proxy, provided that, unless 20 percent or more of the eligible voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of Members are those matters that are described in the meeting notice. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is concluded and shall not need to be reestablished. Unless the Declaration, the Nonprofit Code, the Articles of Incorporation or these Bylaws require a greater vote, if a quorum is present, the affirmative vote of a Majority of the votes cast is the act of the Members.

Section 7. Adjournment. Any meeting of the Members may be adjourned to a different date, time or place and notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment, so long as any new date is not more than ten (10) from the original date. Any business which could be transacted at the original session of the meeting may be transacted at a reconvened session.

Section 8. Proxy. Any Member entitled to vote may do so by written proxy signed either personally or by an electronic transmission valid under the Nonprofit Code. A proxy must specify the meeting at which the proxy is valid and must be received by Secretary or other officer or agent of the Association prior to the opening of the meeting for which it is to be used. Appointment of a proxy is revoked by the person appointing the proxy: (1) attending the meeting and voting in person; or (2) signing and delivering to the Secretary or other office or agent of the Association a written revocation of the proxy or a subsequent form appointing another proxy. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

Section 9. Action Taken Without a Meeting. Any action that may be taken at any meeting of Members may be taken without a meeting if the Association delivers a ballot in writing or by electronic transmission to every Member entitled to vote on the matter.

(a) A ballot shall: (1) set forth each proposed action; and (2) provide an opportunity to vote for or against each proposed action.

(b) Approval by ballot pursuant hereto 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.

(c) All solicitations for votes by ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the Association in order to be counted.

(d) A ballot may not be revoked.

Section 10. Membership List. After fixing a record date for a meeting, the Association shall prepare an alphabetical list of the names of all Members who are entitled to notice of the meeting. The list must show the address of each Member entitled to vote at the meeting. The list of Members must be available for inspection by any Member for the purpose of communication with other Members concerning the meeting, beginning two (2) business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, as provided further in the Nonprofit Code. This list shall 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 for the Association; nor shall the list be used for commercial purposes, sold to or purchased by any Person.

#### **Article 4. Board of Directors**

Section 1. Composition. The affairs of the Association shall be governed by a Board of Directors. During the Declarant Control Period (as hereinafter defined), the Board of Directors shall be composed of one or more Persons selected by Declarant. After the Declarant Control Period, the Board of Directors shall be composed of three (3) persons who shall be elected by Majority vote of the Members. Except for directors appointed by the Declarant hereunder, the directors shall be Members.

Section 2. Term of Office. Notwithstanding anything to the contrary herein, the Declarant shall have the exclusive right to appoint and remove the Member or Members of the Board of Directors, with or without cause, until such time as the earlier of the following dates shall occur: (i) the date which the Declarant may so designate by notice in a writing delivered to the Association, (ii) the date on which one hundred (100%) percent of the Lots planned by the Declarant to be a part of the Property are Improved Lots (as that term is defined in the Declaration) or (iii) ten (10) years from the date hereof. The period of time during which the Declarant has the right to appoint or remove directors is herein referred to as the "Declarant Control Period." The directors appointed by the Declarant need not be Owners or residents of the Property.

At the first election of directors of the Association following the expiration or termination of the Declarant Control Period, the one (1) director receiving the most votes shall be elected for a term of two (2) years and the remaining two (2) directors elected shall have a term of one (1)

year. At that time or at any time thereafter, the Board of Directors, by Majority vote, may elect to change the number of directors to another number so long as the total number of directors is an odd number and there are no less than three (3) and no more than nine (9) directors. At the expiration of the term of office of each director, and at each annual meeting thereafter, a successor shall be elected to serve for a term of two (2) years. Except as otherwise provided herein, each director shall hold office until his successor shall have been elected by the Association.

Section 3. Nominations and Declarations of Candidacy. The Board of Directors shall prescribe the opening date and the closing date of a reasonable filing period in which all eligible persons who have an interest in serving as a director may file as a candidate for such positions. The Board of Directors shall also have the right to establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner. Each candidate shall be given a reasonable, uniform opportunity to communicate his qualifications to the Members and to solicit votes.

Section 4. Elections. All Members of the Association eligible to vote in an election 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 the Board of Directors shall be by written ballot.

Section 5. Removal of Directors. Provided that the meeting notice states that the purpose, or one of the purposes, of the meeting is removal of the director(s), any one (1) or more directors, except for directors appointed by Declarant during the Declarant Control Period, may be removed with or without cause by a Majority of the Members of the Association at any regular or special meeting of the Association, and a successor may then and there be elected to fill the vacancy thus created.

Any director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings or is more than thirty (30) days past due in the payment of any assessment may be removed by the vote of a Majority of the other directors.

Section 6. Resignation of Directors. A director may resign at any time by delivering notice in writing or by electronic transmission to the Board of Directors. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

Section 7. Vacancies. Vacancies in the Board of Directors caused by any reason, except the removal of a director by Declarant or by vote of the Membership, 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 elected shall hold office for the remainder of the term of the director being replaced.

Section 8. Compensation. Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a Majority vote of the Members. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors.

Section 9. 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 of Directors 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 of Directors. 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.

## **Article 5. Board Meetings**

Section 1. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by the Board, but after the expiration of the Declarant's right to appoint Directors hereunder, such meetings shall be held at least once every six (6) months. The newly elected Board shall meet within ten (10) days after each annual meeting of the Association.

Section 2. Special Meetings. Special meetings of the Board of Directors may be called by any director on two (2) days notice to each director given by mail, in person, by telephone, or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting.

Section 3. Waiver of Notice. Any director may waive, in writing or by electronic transmission, notice of any meeting of the Board of Directors. Attendance by a director at any meeting of the Board of Directors shall also waive any required notice to him or her of the meeting unless the director promptly objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 4. Quorum and Conduct of Meeting. A Majority of directors shall constitute a quorum for the transaction of business. Any or all directors may conduct or participate in a meeting by any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 5. Open Meetings. All meetings of the Board of Directors shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board of Directors. Notwithstanding the above, the Board of Directors may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 6. Action Without a Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if a Majority of the directors consent in writing or by electronic transmission to such action. Such consents must describe the action taken and shall be filed with the Association's records.

## **Article 6. Powers and Duties of the Board**

Section 1. Management. 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 Development and may perform all acts and do all things that are not required to be performed by a vote of the Members pursuant to Georgia law, the Declaration, the Articles of Incorporation, or these Bylaws. The duties of the Board of Directors include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;

(b) designating assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing installment payments for the annual assessment;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility as more particularly described in the Declaration;

(d) designating, hiring, and dismissing the personnel necessary for the operation and upkeep of the Area of Common Responsibility and supervising the personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in O.C.G.A. §14-3-302, and using the proceeds to administer the Association;

(f) making, establishing, abolishing, amending, and enforcing reasonable rules and regulations and imposing sanctions for violations of the Declaration, these Bylaws and the rules and regulations including, without limitation, monetary fines as more specifically set forth in the Declaration and these Bylaws;

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

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

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

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

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

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

(m) contracting with any Person for the performance of various duties and functions, including but not limited to management companies, legal and accounting services. The Board of Directors shall have the power to enter into common management agreements with other Persons. Any and all functions of the Association shall be fully transferable by the Board of Directors, in whole or in part, to any other entity.

Section 2. Borrowing Limitation. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration, or improvement of the Area of Common Responsibility, and for other purposes, with the approval of a Majority of the Members of the Association.

Section 3. 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 of Directors, to perform such duties and services as the Board of Directors shall authorize. The Board of Directors shall use reasonable efforts in any management contract to provide for termination of such contract with or without cause and without penalty, upon no more than thirty (30) days written notice. No management contract shall have a term in excess of one (1) year.

Section 4. Committees. The Board may establish an Architectural Control Committee for the purpose of establishing and maintaining architectural standards in the Development as provided in the Declaration and such other committees as the Board determines with the powers and duties that the Board shall authorize. 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 7. Officers**

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

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

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

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



Section 5. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and of the Board. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the power to appoint committees from among the Members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

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

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

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

Section 9. Other Officers. Other offices may be created by the Board of Directors with such titles and duties as are defined by the Board of Directors.

Section 10. Signing Authority. After the expiration of 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.

## **Article 8. Rule Making and Enforcement**

Section 1. Authority and Enforcement. 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 Units and the Common Areas; provided that the rules or regulations must be in furtherance of, and not contrary to, the uses and purposes set forth in the Declaration and these Bylaws, and provided further that copies of all such rules and regulations shall be furnished to all Members, who shall each deliver a copy thereof to all Occupants of such Member's Unit. Every Member and Occupant shall comply with the Declaration, Bylaws and rules and regulations, and any lack of compliance therewith shall entitle the Association to take action to enforce the terms of the Declaration, Bylaws or the rules and regulations. Following the expiration of the Declarant Control Period, any rule or regulation may be repealed by the affirmative vote or written consent of a Majority of the total Association vote at an annual or special meeting of the Membership (except as otherwise restricted in the Declaration during the time that the Declarant owns any Unit).

For any violation of a duty, restriction, or obligation imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder (except for the obligation to pay assessments, which is provided in Article 9 below), the Board of Directors shall have the power to impose reasonable fines, which, pursuant to the Declaration shall be a charge on the property and which shall constitute a lien upon the Member's Unit if unpaid, and/or to suspend a Member's right to vote and/or to use the Common Areas provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Unit. In the event that any Occupant of a Unit violates the Declaration, Bylaws, or a rule or regulation and a fine is imposed, notice of such violation shall be sent to the Member and Occupant, and the fine shall first be assessed against such Occupant; provided, however, if the fine is not paid by the Occupant within the time period set by the Board of Directors, the Member shall pay the fine upon notice from the Board of Directors, and the fine shall be an assessment and a lien against the Unit until paid. Such delinquency shall constitute a continuing lien as provided in Paragraph 10(b) and (c) of the Declaration. The failure of the Board of Directors 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 of Directors to do so thereafter.

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

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

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

## **Article 9. Assessments and Enforcement**

Section 1. Authority and Enforcement. The Board of Directors shall have the authority to levy and collect reasonable assessments governing the Property as provided for in the Declaration. All sums lawfully assessed by the Association against any Unit and the Owner thereof, together with interest thereon and the costs of collection thereof, shall, from the time the sums become due and payable, be the personal obligation of such Owner/Member and constitute a continuing lien in favor of the Association on such Unit.

The failure of the Board of Directors to fix the assessment amounts or to deliver to each Member the assessment notice and budget shall not be deemed a waiver, modification or release of any Member of the obligation to pay assessments. In such event, each Member shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

Section 2. Fining Procedure. If a Member is shown on the books of the Association to be delinquent in any assessment due the Association, imposition of a late fee in the amount due shall be assessed against such Unit and the entire amount of such assessment, including the portion thereof which would otherwise be payable in installments, plus the late fee, may be declared by the Board of Directors to be immediately due and payable in full to the Association. All other lien rights and remedies available to the Association shall be binding on the Member if delinquent in the payment of his/her assessments. The Member's right to vote and the Member's right to use the Common Areas shall automatically be suspended for any assessments which are overdue by thirty (30) days or longer.

A late notice may be sent to a Member who has not paid assessments or late fees in full as more specifically set forth in the Declaration. The late notice may warn the Member that the account will be accelerated. If the assessment remains unpaid, the Association may institute suit to collect the debt and foreclose its lien as more specifically set forth in the Declaration. Non-receipt of such notice does not relieve the Member of his or her financial obligation to pay the costs of collection accrued by the Association for the satisfaction of the delinquent debt, including, but not limited to the late fees, interest, all costs of collections, including the costs of filing any liens against the delinquent property and costs of filing a civil suit for collection and attorney's fees.

If the Association receives from any Member, in any accounting year, two (2) or more checks returned for insufficient funds for payment of assessments or other charges, the Board may require all future payments to be made by certified check, cashier's check or money order for the remainder of the fiscal year.

Payments received shall be credited in the following order to the fullest extent allowed by the law:

- a. to cover NSF charges and attorney fees
- b. to cover late charges
- c. to cover interest

- d. to cover delinquent or past due assessments, with longest outstanding assessments being paid first
- e. to cover current assessments to include: initiation fee/capital contribution.

Failure of the Association to follow any of the procedures set forth herein or in the Declaration shall not excuse any Member from its obligation to pay all assessments, interest, charges and costs, including reasonable attorneys' fees, due in a timely manner, nor shall failure constitute a waiver, modification or release of the Association's right to collect all assessments, costs, including reasonable attorneys' fees, charges and interest due to the Association.

Section 3. Suspension of Utilities. In addition to the remedies herein, the Board of Directors may suspend a Member's right (and that of an Occupant's) to the use of utilities controlled by the Association whether or not actually provided by the Association or by a third party on the Association's behalf, including without limitation, electricity, water or gas until delinquent assessments and all related charges, including any applicable attorneys' fees, are paid in full. Prior to the imposition of any such suspension, the delinquent Member shall be sent notification that such utilities will be disconnected for non-payment and that Member will have an opportunity to be heard before the Board of Directors or such committee the Board of Directors may establish to hear such cases. No such suspension shall be imposed in a manner that will endanger the health, safety or property of any Member or Occupant.

#### **Article 10. Additional Remedies and Enforcement Rights**

Section 1. Self-Help. Notwithstanding anything to the contrary herein contained, the 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, booting or other means of handling 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 procedures set forth in Articles 8 and 9. In any such action, to the maximum extent permissible, the Member or Occupant responsible for the violation for which abatement is sought shall be responsible for reasonable attorney's fees or other costs actually incurred.

Section 2. Rights of Entry and Removal. The Association or its duly authorized agent shall have the power to enter a Unit or upon any portion of the Common Areas to abate or remove any structure, thing or condition which violates the Declaration, the Bylaws, or the rules and regulations, using such force as may be reasonably necessary; provided, however, written notice shall be given to the Member/Owner of the Unit at least two (2) days prior to the time that any items of construction are altered or demolished; provided further that in the event that an emergency exists in which the abatement or removal is immediately required, the abatement or removal may be carried out without such notice, and the Association shall give such notice as soon thereafter as is reasonably possible, but in no event later than such timeframes as set forth in the Declaration. All costs of self-help, including reasonable attorneys' fees, shall be assessed against the violating Member and shall be collected as provided herein for the collection of assessments.

Section 3. Remedies Cumulative. Nothing herein shall in anyway limit the remedies available to the Association. All remedies herein shall be deemed cumulative of those set forth in the Declaration of the Association and of those otherwise available at law or in equity.

#### **Article 11. Miscellaneous**

Section 1. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid, or statutory overnight delivery: (a) If to a Member/Owner, at the address which the Member has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Unit owned by such Member; (b) If to an Occupant, at the address of the Unit occupied; or (c) If to the Association or the Board of Directors, at the address of the principal office of the Association or at such other address as shall be designated in writing and filed with the Secretary.

Section 2. Electronic Documents and Signatures. All Electronic Documents and Electronic Signatures (as such terms are defined in the Georgia Electronic Records and Signatures Act, O.C.G.A. 10-12-1, *et seq.*) shall be governed by the Georgia Electronic Records and Signatures Act. The Board may require reasonable verification of any Electronic Document or Electronic Signature and, pending verification, the Board may refuse to accept any such Electronic Document or Electronic Signature that, in the Board's sole discretion, is not clearly authentic. Neither the Board nor the Association shall be liable to any Member or any other Person for accepting or acting in reliance upon an Electronic Signature or Electronic Document which the Board reasonably believes to be authentic. Any Member or Person who negligently, recklessly, or intentionally submits any falsified Electronic Document or unauthorized Electronic Signature shall fully indemnify the Association for actual damages, reasonable attorneys' fees, and expenses incurred as a result of such acts.

Section 3. Rules of Order. Robert's Rules of Order (latest edition) shall govern all Association proceedings when not in conflict with Georgia law, the Declaration, these Bylaws or the Articles of Incorporation.

Section 4. Liability and Indemnification of Officers and Directors and Committee Members. The Association shall indemnify every officer, director and committee member 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 individual in the performance of his duties, except for his own individual willful misfeasance or malfeasance. 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 individuals may also be Members of the Association), and the Association shall indemnify and forever hold

each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member or former officer, director or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

Section 5. 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. Captions and Construction. 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. The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 7. Fiscal Year. The fiscal year of the Association may be set by a resolution of the Board of Directors and, in the absence thereof, shall be the calendar year.

Section 8. Financial Review. A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board of Directors. However, after having received the Board of Directors' financial statement review at the annual meeting, the Owners may, by a Majority of the Association vote, require that the accounts of the Association be audited as a Common Expense by an independent accountant. Such statement shall be made available to the holder, insurer, or guarantor of any first mortgage on a Unit upon submission of a written request and must be available within one hundred twenty (120) days of the fiscal year end of the Association.

Section 9. Conflicts. In the event that 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 Member, by acceptance of a deed or other conveyance for his Lot, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

Section 10. Amendment. Except where a higher vote is required for action under a particular provision of the Declaration or Bylaws, in which case such higher vote shall be necessary to amend, these Bylaws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Members holding two-thirds (2/3) of the total vote of the Association. During the Development Period, any amendment to these Bylaws shall also require the written consent of Declarant. Notice of any meeting at which an amendment will be considered shall state that fact and the subject matter of the proposed amendment.

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

Section 11. Books and Records.

(a) All Members of the Association and Eligible Mortgagees 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) its Declarations or restated Declarations and all amendments to them currently in effect;
  - (iv) any and all resolutions adopted by either its Members or the 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;
  - (v) any rules governing the Association;
  - (vi) any books, records or financial statements of the Association
  - (vii) the minutes of all meetings of Members and records of all actions approved by the Members for the past three (3) years;
  - (viii) all written communications to Members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;
  - (ix) a list of the names and business or home addresses of its current direct officers;
- and
- (x) its most recent annual registration delivered to the Secretary of State of Georgia.

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

- (i) excerpts from minutes of any Board of Directors meeting, records of any action of a committee of the Board of Directors while acting in place of the Board of Directors on behalf of the Association, minutes of any meeting of the Members, and records of action taken by the Members or the Board of Directors without a meeting, to the extent not subject to inspection under subsection 9(a) above;
- (ii) accounting records of the Association; and
- (iii) the Membership list only if for a purpose related to the Member's interest as a Member. Without the consent of the Board of Directors, 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 and may not be used for any commercial purpose; or sold to or purchased by any person.

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