

*Jay C. Stephenson*  
Jay C. Stephenson  
Clerk of Superior Court Cobb Cty. Ga.

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Return to: Weissman, Nowack, Curry & Wilco, P.C.  
One Alliance Center, 4th Floor  
3500 Lenox Road  
Atlanta, Georgia 30326  
Attention: SGW

STATE OF GEORGIA  
COUNTY OF COBB

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
KIRK POINTE**

THIS DECLARATION is made on the date hereinafter set forth by Kirk Lane Development, LLC,  
a Georgia Limited Liability Company ("Declarant").

**Background Statement**

Declarant is the owner of the real property described in Paragraph 2 of this Declaration and desires to subject such real property to the provisions of this Declaration to create a residential community of single-family housing, and to provide for the subjecting of other real property to the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the real property described in Paragraph 2 of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and any and all easements, restrictions and/or requirements as set forth on the plat of the Community and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property made subject hereto, and shall be binding on all persons or entities having any right, title, or interest in all or any portion of the real property made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

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

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

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
KIRK POINTE**

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EXHIBIT "B" - BYLAWS

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
KIRK POINTE**

**1. DEFINITIONS.**

Generally, terms used in this Declaration, the Bylaws, the Articles of Incorporation and in any Supplementary Declaration shall have their normal, generally accepted meanings or the meanings given in the Georgia Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall be defined as follows:

(a) **Approved Builder** means any builder or developer that is designated by Declarant as an "Approved Builder". An Approved Builder shall continue to be an Approved Builder for so long as it owns at least one (1) Lot for the purpose of construction of a residence and resale of the Lot and residence.

(b) **Architectural Control Committee** or **ACC** means the committee established to exercise the architectural review powers set forth in Paragraph 6 hereof.

(c) **Area of Common Responsibility** means the Common Property, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any other Person become the Association's responsibility to maintain. Any public right-of-way within or adjacent to the Community, may be considered by the Board to be part of the Area of Common Responsibility.

(d) **Articles or Articles of Incorporation** mean the Articles of Incorporation of Kirk Pointe Homeowners Association, Inc., filed with the Secretary of State of the State of Georgia.

(e) **Association** means Kirk Pointe Homeowners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

(f) **Association Legal Instruments** means this Declaration and all exhibits hereto, including the Association's Bylaws, and the plats, all as may be supplemented or amended.

(g) **Board or Board of Directors** means the body responsible for management and operation of the Association.

(h) **Bylaws** mean the Bylaws of Kirk Pointe Homeowners Association, Inc., attached to this Declaration as Exhibit "B" and incorporated herein by this reference.

(i) **Common Property** means any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

(j) **Common Expenses** mean the expenses incurred or anticipated to be incurred for the general benefit of all Lots, including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Area of Common Responsibility.

(k) **Community** means that real estate which is submitted to the provisions of this Declaration, as described in Exhibit "A" attached hereto and incorporated herein by reference.

(l) **Community-Wide Standard** means the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board and the Architectural Control Committee.

(m) **Declarant** means and refers to Kirk Lane Development, LLC, a Georgia limited Liability Company, and its successors-in-title and assigns, provided that in a recorded instrument, such successor-in-title or assignee is designated as the "Declarant" hereunder; and, provided, further, upon the effective date of the designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that there shall be only one "Declarant" hereunder at any one point in time.

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

(o) **Effective Date** means the date that this Declaration is recorded in the Cobb County, Georgia land records.

(p) **Electronic Record** means information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form, such as e-mail, web pages, electronic documents, and facsimile transmissions.

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

(r) **Eligible Mortgage Holder** means a holder of a first Mortgage secured by a Lot who has requested in writing notice of certain items as set forth in this Declaration.

(s) **Kirk Pointe Cove Driveway** shall mean the driveway accessed from Kirk Lane as more particularly shown on the Recorded Plat as "Kirk Pointe Cove (50'R/W), and as relocated from time to time pursuant to the terms of this Declaration.

(t) **Kirk View Court Driveway** shall mean the driveway accessed from Kirk Lane as more particularly shown on the Recorded Plat as "Kirk View Court (50'R/W), and as relocated from time to time pursuant to the terms of this Declaration.

(u) **Lot** means a portion of the Community whether or not improvements are constructed thereon intended for ownership and use as a single-family dwelling site as permitted in this Declaration and as shown on the plats for the Community, or amendments or supplements thereto, recorded in the Cobb County, Georgia land records.

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

(w) **Mortgage** means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.

(x) **Mortgagee** or **Mortgage Holder** means the holder of any Mortgage.

(y) **Occupant** means any Person staying overnight in a dwelling on a Lot for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year, regardless of whether such Person is a tenant or the Owner of such property.

(z) **Officer** means an individual who is elected by the Board to serve as President, Vice President, Secretary, or Treasurer, or such other subordinate officers as the Board may determine necessary.

(aa) **Owner** means the record title holder of a Lot, but shall not include a Mortgage Holder. For purposes hereof, the holder of a tax deed on a Lot shall be deemed the Owner thereof, notwithstanding the fact that there may exist a right of redemption on such Lot.

(bb) **Person** means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

(cc) **Recorded Plat** means that certain Final Subdivision Plat for Kirk Pointe, dated June 6, 2005 prepared by Christopher A. Evans, Georgia Registered Land Surveyor No. 2784 and recorded on June 9, 2005 in Plat Book 236, Pages 99, Cobb County, Georgia records.

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

## 2. **LOCATION, PROPERTY DESCRIPTION, AND PLATS.**

(a) **Subject Property.** The real property subject to this Declaration is located in Land Lots 279 and 280, of the 20th District, 2<sup>nd</sup> Section of Cobb County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. A plat of survey relating to the Community has been filed in Plat Book 236, Pages 99, of the Cobb County, Georgia records. The Community is divided into thirty-one (31) Lots, which are depicted on the survey. The plat of survey is incorporated herein by reference as fully as if the same were set forth in their entirety herein.

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

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

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

(a) **Membership.** All Lot Owners, by virtue of their ownership of a Lot in the Community are members of the Kirk Pointe Homeowners Association, Inc. This is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the

include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot owned.

(b) **Voting.** The Owner or collective Owners of a Lot shall be entitled to one (1) equally weighted vote for such Lot. Members shall be entitled to one (1) equal vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners determine among themselves, otherwise, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

#### 4. **ASSESSMENTS.**

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

(b) **Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration; and (d) initiation fees as set forth below.

All such assessments, together with late charges, interest not to exceed the maximum rate permitted by law per annum, costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall be secured by a lien on such Lot in favor of the Association and the Association shall be entitled to file such a lien in the land records of Cobb County, Georgia. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes and (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Cobb County, Georgia and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

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

Such lien amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time the amounts fell due. Each Owner and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Paragraph shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same. In addition to the other remedies provided herein, the Association shall have the right

to suspend the voting rights of a Lot Owner for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid.

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

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

(c) **Computation of Operating Budget and Assessment.** Prior to the beginning of each fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Community during the coming year, which may include, if necessary, a capital contribution or reserve in accordance with a capital budget separately prepared. From such annual budget, the Board shall establish the annual assessment or installments for the coming year. The annual assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total budgeted operating costs of the Association.

The Board shall cause the budget and notice of the assessment(s) to be delivered to each member at least thirty (30) days prior to the due date for such assessment, or the first installment thereof. The budget and the assessment shall become effective unless disapproved at a duly called Association meeting by a vote of a majority of the total Association membership; provided, however, if a quorum is not obtained at such meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

If the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then, until a budget is determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. However, the Board may propose a new or adjusted budget at any time during the year by causing the proposed budget and assessment to be delivered to the members at least thirty (30) days prior to the proposed effective date thereof. Unless a special meeting is requested by the members, as provided in the Bylaws for special meetings, the new or adjusted budget and assessment shall take effect without a meeting of the members.

The budget shall not operate as a limitation on expenditures by the Board, but, rather, the budget is merely an estimate of Common Expenses on which the Board may base the annual assessments.

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

(e) **Specific Assessments.** The Board shall have the power to specifically assess pursuant to this subparagraph as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this subparagraph shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this subparagraph in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this subparagraph. Fines levied pursuant to Paragraph 14 hereof and the costs of maintenance performed by the Association for which the Owner is responsible under Paragraph 5 of this Declaration shall be specific assessments. The Board may also specifically assess Owners for the following Association expenses:

(i) expenses relating to the maintenance and repair of Kirk Pointe Cove Driveway shall be specifically assessed equally among Lots 1-10;

(ii) expenses relating to the maintenance and repair of Kirk View Court Driveway shall be specifically assessed equally among Lots 12-18;

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

(iv) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

(f) **Date of Commencement of Assessments.**

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

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

(g) **Delinquent Assessments.** All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default. If the annual assessment, any part or installment thereof or any other fine, special assessment or charge is not paid in full within ten (10) days of the due date, or such later date as may be provided by the Board:

(i) a late charge in an amount as the Board may from time to time determine which shall not exceed fifteen percent (15%) of the assessment payment, may be imposed without further notice or warning to the delinquent Owner;

(ii) interest at the highest rate as may be authorized by law shall accrue from the due date;

(iii) upon thirty (30) days written notice to the Owner, the Board may accelerate and declare immediately due all of that Owner's unpaid installments. Upon acceleration, that Owner shall thereby lose the privilege of paying any and all assessments and charges in installments for that fiscal year, unless such privilege is otherwise reinstated in the Board's sole discretion; and

(iv) a lien, as herein provided, shall attach, which lien shall include all amounts due from the date such amounts became due and payable, late fees, interest, all costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law.

If assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Owner's and Occupant's rights to vote and use the Common Property shall be automatically suspended until all amounts owed are paid in full (provided, however, the Board may not deny ingress or egress to or from a Lot) and the Association, acting through the Board of Directors, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, and Georgia law, including reasonable attorney's fees actually incurred and to foreclose its lien. Enforcement under this subparagraph is not dependent upon or related to other restrictions and/or other actions.

If part payment of assessments or other charges is made, the amount received may be applied first to costs and attorney's fees, then to interest, then to late charges, then to delinquent assessments and then to current assessments. Late charges may be assessed on delinquencies which are created by the application of current payments to outstanding delinquent assessments or charges.

(h) **Budget Deficits During Declarant Control.** For so long as the Declarant owns any property for development and/or sale within the Community, Declarant may elect, but shall not be obligated, to reduce the assessment for any fiscal year by paying a subsidy on such terms and under such circumstances as Declarant in its sole discretion may decide. However, any Declarant subsidy shall be disclosed as a line item in the income portion of the Common Expense budget. If the Declarant elects to pay a subsidy, the amount of the subsidy shown on the budget shall be an estimate only, and the Declarant shall be obligated to fund such subsidy only to the extent of any operating deficit, if any, between the actual operating expenses of the Association and the sum of annual, common assessments, special assessments, and specific assessments collected by the Association in any assessment year. The payment of a subsidy in one (1) year shall under no circumstances obligate the Declarant to continue payment of a subsidy in future years; provided, however, the Declarant shall be responsible for assessments to the extent required by subparagraph (f) hereof. The Declarant, in its sole discretion, may choose to characterize all such subsidized amounts expended to offset any actual operating deficit of the Association as loans to the Association, which, at the Declarant's request shall be evidenced by a promissory note(s) from the Association to Declarant. Such promissory note(s), if any, shall be due and payable upon demand, with interest at the rate of ten percent (10%) per annum after demand, unless otherwise negotiated and agreed to by the Association and the Declarant.

The Declarant's option to subsidize the assessment may be in the form of cash, or by "in kind" contributions of services or materials, or a combination of these. The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If Declarant, or its affiliate, as the case may be, and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and Declarant, or its affiliate, as the case may be, cannot agree as to the value of any contribution, Declarant, or its affiliate, as the case may be,

shall supply the Association with a detailed explanation of the services performed and materials furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors, approved by Declarant, or its affiliate, as the case may be, who are in the business of providing such services and materials. If the Association and the Declarant, or its affiliate, as the case may be, are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

(i) **Capital Budget and Contribution.** After the expiration of Declarant's right to appoint and remove officers and directors of the Association, pursuant to Article III, Part A, Section 2 of the Bylaws, the Board of Directors shall annually prepare a capital reserve budget that shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital reserve contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital reserve budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The annual capital reserve contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in subparagraph (c) hereof. A copy of the capital reserve budget shall be distributed to each member in the same manner as the operating budget.

(j) **Initiation Fee.** The first Owner of a Lot conveyed from Declarant ("First Owner") shall pay to the Association an initiation fee in the amount of Three Hundred and Fifty Dollars (\$350). After the First Owner, any subsequent Owner, who acquires a Lot subject to mandatory membership in the Association pursuant to the terms of this Declaration shall pay an initiation fee in the amount of Three Hundred and Fifty Dollars (\$350). The initiation fee shall not be deemed an advance payment of regular or special assessments. The Board shall have discretion to increase or decrease the initiation fee by resolution of the Board; provided, however, the initiation fee shall not be changed by the Board without Declarant's consent for so long as Declarant owns any property in the Community primarily for development and/or sale. Notwithstanding anything to the contrary herein, no initiation fee shall be due from any Person who takes title through foreclosure (or deed in lieu of foreclosure) upon the lien of any first priority Mortgage covering the Lot and the lien of any secondary purchase money Mortgage covering the Lot. This initiation fee shall be an assessment, which is the personal obligation of the Owner, and shall constitute a lien, which may be collected as provided in this Article.

(k) **Statement of Account.** Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against such Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding Ten and No/100 Dollars (\$10.00) or such higher amount as may be authorized by law, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein. The Association may require an additional fee not to exceed Twenty Five and No/100 Dollars (\$25.00) if the Association provides a copy of the Declaration and Bylaws to any such Person in connection with a closing or otherwise upon request.

(l) **Surplus Funds and Common Profits.** Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, be: (1) distributed to the Owners; (2) credited to the next assessment chargeable to the Owners; or (3) added to the Association's capital reserve account as set forth in subparagraph (i) above.

## 5. MAINTENANCE RESPONSIBILITY.

(a) **Owner's Responsibility.** Each Owner shall maintain and keep his or her Lot and improvements thereon in good repair, condition and order. This maintenance responsibility shall include driveway(s) leading from any improvements from the lot to the public right of way, including all pipes, lines, ducts, conduits, or other apparatus which serve only the Lot located within the Lot's boundaries or, if located outside the Lot's boundaries, the portion of the pipe from the cutoff valve serving the Lot (including all gas, electricity, water, sewer and air conditioning pipes, lines, ducts, conduits and other apparatus and the cut off valves for same serving only the Lot). In addition, each Owner shall maintain, repair and replace at its cost and expense, all areas that Owner has exclusive rights (regardless of who actually owns such area). Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto.

Each Owner shall also be obligated:

- (i) To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Lots or other Lot Owners.
- (ii) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.
- (iii) Not to make any alterations in the portions of the Lot which are to be maintained by the Association or to remove any portion thereof or to make any additions thereto or do anything with respect to the exterior or interior of the Lot which would or might jeopardize or impair the safety or soundness of any Lot without first obtaining the written consent of the Board of Directors of the Association and all Lot Owners and Mortgagees of the Lots affected, nor shall any Lot Owner impair any easement without first obtaining written consent of the Association and of the Lot Owner or Owners and their Mortgagees for whose benefit such easement exists.
- (iv) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Lot Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Lot Owner, his or her family, tenants or guests, with the cost thereof to be added to and become part of the Lot Owner's next chargeable assessment.

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

If the Board of Directors determines that: (a) any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair or replacement of items of which he or she is responsible hereunder; or (b) that the need for maintenance, repair, or replacement which is in the Area of Common Responsibility is caused through the willful or negligent act of any Owner, his or her family, guests, lessees, or invitees, and is not covered or paid by insurance, in whole or in part, then, except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with

reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. In the case of (a) above where the Owner has not discharged his or her responsibility, unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair and diligently pursue completion thereof within ten (10) days. If the Board determines that an emergency exists or that an Owner has not complied with the demand given by the Association as herein provided, or that the need for maintenance or repair is in the Area of Common Responsibility as in the case of (b) above, then the Association may provide any such maintenance, repair or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be a lien against the Lot, and shall be collected as provided herein for the collection of assessments.

(b) **Association's Responsibility.** The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include the following: maintenance, repair, and replacement, subject to any insurance then in effect, of:

- (i) Common Property;
- (ii) all entry features for the Community including any irrigation system and the expenses for water and electricity, if any, provided to all such entry features;
- (iii) all drainage and detention areas;
- (iv) all street signs within the Community to the extent any such signs are not maintained on an ongoing basis by a local governmental entity;

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community, where the Board has determined that such maintenance would benefit all Owners.

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

If, during the course of performing its maintenance responsibilities hereunder, the Association discovers that maintenance, repair or replacement is required of an item which is the Owner's responsibility, and such maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Owner and at the Owner's sole expense, without prior notice to the Owner, such being deemed an emergency situation hereunder.

If the Board determines that the need for maintenance or repair in the Area of Common Responsibility is caused through the willful or negligent act of any Owner or Occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or Occupant's Lot, which shall become the personal obligation of the Owner, a lien against the Lot and shall be collected as provided herein for the collection of assessments.

The Association shall repair incidental damage to any Lot resulting from performance of work that is the responsibility of the Association. Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

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

c) **Party Walls.** Each fence built as a part of the original construction which serves and separates any two (2) adjoining Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Paragraph, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

- (i) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.
- (ii) **Damage and Destruction.** If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has benefited by the wall may restore it, and the other Owner or Owners thereafter who are benefited by the wall or fence shall contribute to the cost of restoration thereof in equal proportions, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
- (iii) **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Paragraph shall be appurtenant to the land and shall pass to such Owner's successors-in-title.
- (iv) **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Paragraph, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties. Compliance with this subparagraph shall be a condition precedent to any right of legal action that either party may have against the other in a dispute arising hereunder.

(e) **Mold and/or Mildew.** Mold and/or mildew can grow in any portion of a dwelling Building that is exposed to elevated levels of moisture including, but not limited to, the portions of the dwelling in which HVAC condenser units are located. Therefore, upon expiration of the Declarant Control Period, all Owners agree with respect to their defined areas of maintenance responsibility to: (i) regularly inspect their respective dwelling for the existence of mold, mildew and/or water intrusion (except when the water intrusion is part of the normal functioning of improvements and appliances such as showers, sinks, dishwashers and other similar appliances and improvements) and/or damage; (ii) upon

discovery, immediately repair in a good and workman-like condition the source of any water intrusion; (iii) remediate or replace any building material that has absorbed water or moisture as a result of water intrusion; and (iv) promptly and regularly remediate all mold and/or mildew in accordance with current industry-accepted methods. Each Owner further agrees not to block or cover or permit anyone to block or cover any of the heating, ventilation or air-conditioning ducts located within the dwelling.

Declarant shall have no obligation to perform any invasive testing or inspections, maintenance or repairs and shall not be held liable for any loss or damage caused by the failure of an Owner to perform their obligations herein.

(f) **Measures Related to Insurance Coverage.**

(i) The Board, upon resolution, shall have the authority to require all or any Lot Owner(s) to do any act or perform any work involving portions of the Community which are the maintenance responsibility of the Lot Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Community, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all Owners to make improvements to the Owner's Lot; and such other measures as the Board may reasonably require so long as the cost of such work does not exceed five hundred (\$500.00) dollars per Lot in any twelve (12) month period.

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

(g) **Maintenance Standards and Interpretation.** The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board to another term of the Board. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Paragraph. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

6. **ARCHITECTURAL CONTROLS.**

(a) **Architectural Control Committee.** The Architectural Control Committee ("ACC") shall constitute a standing committee of the Association. The ACC shall consist of the Board unless the Board delegates to other Persons the authority to serve on the ACC. The ACC shall have the authority to select and employ professional consultants to assist it in discharging its duties, the cost of such consultants to be paid by the Owner of any Lot for which plans and specifications have been submitted for approval. The Owner of any such Lot shall be responsible for paying the full costs of each review, whether or not submitted plans and specifications are approved by the ACC, and the ACC may require payment of all such costs prior to approval of plans and specifications. The ACC also may charge

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

So long as the Declarant owns any property for development and/or sale within the Community or has the unilateral right to annex additional property into the Community pursuant to Paragraph 16(a) hereof, the Declarant shall have the right to appoint all members of the ACC. Additionally, the Declarant may divide the ACC into two (2) subcommittees, with one (1) subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the ACC. Unless otherwise set forth herein, this Paragraph shall not apply to initial construction of a dwelling or related improvements on a Lot by Declarant or an Approved Builder.

(b) **Architectural Standards.** Except for the original construction of a dwelling on a Lot by the Declarant or an Approved Builder and except as otherwise provided herein, no Owner, Occupant, or any other Person may, without first obtaining written approval of the ACC:

- (i) make any encroachment onto the Common Property,
- (ii) construct any dwelling or other improvement on a Lot,
- (iii) make any exterior change, alteration or construction on a Lot (including painting, regrading or significant landscaping modifications), or any alteration of the Lot which affects the exterior appearance of the Lot, or
- (iv) erect, place or post any object, sign, clothesline, playground equipment, light, storm door or window, artificial vegetation, exterior sculpture, fountains, flags or other thing on the exterior of the Lot, on the dwelling on the Lot, in any windows of the dwelling (other than appropriate window treatments as provided herein), or on any Common Property.

However, a mezuzah or comparable religious symbol not larger than three inches (3") in width and nine inches (9") in height may be posted on the doorframe of the Unit. In addition, reasonable seasonal decorative lights may be displayed between Thanksgiving and January 15.

(c) **Required Action by Board or ACC.** Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. Except as may otherwise be determined by the Board, the ACC or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations. The Association, acting through the Board, shall be entitled to stop any construction that is not in conformance with approved plans. The Board or the ACC may publish written architectural standards for exterior and Common Property alterations or additions.

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

If the Board or ACC fails to approve or to disapprove such application within forty-five (45) days after the application and all information as the Board or ACC may reasonably require have been submitted, then the Owner submitting the application may issue written notice, via certified mail, to the

Association President, informing the President of the Owner's intent to proceed with the modification as identified in the application. Unless the Association issues a written disapproval of the application within ten (10) days of receipt of the Owner's notice, the approval will not be required and this subparagraph will be deemed complied with as to the items specifically identified in the application; provided, however, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, Bylaws or rules and regulations of the Association, or of any applicable zoning or other laws.

(d) **Appeal.** If the Board of Directors is not the ACC and the ACC or its designated representative disapproves any application or part thereof, an Owner shall have the right to appeal the ACC's decision to the Board of Directors. The Board shall rule on the appeal within forty-five (45) days of receiving written notice requesting an appeal from the Owner. In ruling on the appeal, the Board shall consider all relevant materials presented to it by either the Owner or the ACC, the decision of the ACC, and the application of the Owner to the ACC. The Board of Directors shall have the final authority to approve, disapprove, or conditionally approve or disapprove the application of the Owner. If the Board does not receive written notice from the Owner by certified mail requesting an appeal within fourteen (14) days from the date of the ACC's notice to the Owner of its decision, the decision of the ACC shall become final and all rights of appeal shall terminate and thereafter be void.

If the Board of Directors is the ACC, each Owner hereby agrees that any controversy, claim, or dispute arising out of or relating to the decision of the ACC as to an Owner's application for approval of an architectural modification or interpretation or effect of any provision contained in this Paragraph shall be submitted for resolution by the Architectural Appeals Board. Any Owner desiring to appeal the decision of the ACC as to any application by the Owner for approval of architectural modification or interpretation or effect of any provision contained in this Paragraph shall provide the Board of Directors with a written notice of appeal within thirty (30) days of the date of the ACC's notice of its decision. If the Board of Directors does not receive such written notification within said time period, the decision of the ACC shall be deemed final and all rights of appeal shall terminate and thereafter be void. The Architectural Appeals Board shall be initially comprised of two (2) registered architects, with the Board of Directors and the appealing Owner each entitled to appoint one (1) architect. If the two (2) architects are unable to reach a unanimous decision as to the matter on appeal, a third registered architect shall be jointly appointed by the two (2) architects, and said third architect shall render a decision on behalf of the Architectural Appeals Board. The decision of the Architectural Appeals Board shall be deemed final and binding upon the Board of Directors and the appealing Owner and no further appeals process shall be available to the parties. The Board of Directors and the appealing Owner shall each bear the fees of its respective architect appointed to the Architectural Appeals Board, and, if in the event a third architect is appointed to the Architectural Appeals Board, the Board of Directors and the appealing Owner shall each pay one-half of the fees for the third architect.

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

(f) **Limitation of Liability.** PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER THE ACC, THE BOARD OF DIRECTORS, THE MEMBERS THEREOF, NOR THE ASSOCIATION ASSUMES LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. NEITHER DECLARANT, THE ASSOCIATION,

THE ACC, THE BOARD, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSON OR OWNER WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, THE ASSOCIATION, THE ACC, THE BOARD, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM TO RECOVER ANY DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE, OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

(g) **No Waiver of Future Approvals.** Each Owner acknowledges that the members of the Board of Directors and the ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. Each Owner further acknowledges that the Board of Directors and ACC may adopt different architectural standards for different parts of the Community, based on street visibility, visibility to other lots, and location and nature of the proposed modification. The approval of either the Board of Directors or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board of Directors or the ACC, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(h) **Commencement and Completion of Construction.** All changes, modifications and improvements approved by the ACC hereunder must be commenced within six (6) months from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. All work approved by the ACC hereunder shall be completed in its entirety within ninety (90) days from the date of commencement, unless otherwise agreed in writing by the ACC. All approved changes, modifications, and improvements must be completed in their entirety. An Owner may not construct only a portion or part of an approved change, modification, or improvement.

(i) **Certification of Compliance; Notice of Violation.** Upon completion of the installation, construction or alteration of any Structure in accordance with plans and specifications approved by the ACC, the ACC shall, upon written request of the Owner thereof or upon the ACC's own initiative, issue a Certificate of Compliance, identifying such Structure and Lot upon which such Structure is placed, and stating that the plans and specifications have been approved and that such Structure complies with such plans and specifications. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ACC.

Any Certificate of Compliance issued in accordance with the provisions of this Paragraph shall be prima facie evidence of the facts therein stated; and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all Structures on the Lot comply with all the requirements of this Paragraph, provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of Structures or of the workmanship, or to represent or warrant to anyone the quality, function or operation of

the Structures or of any construction, workmanship, engineering, materials or equipment. The issuance of the Certificate shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule or regulation other than those of the ACC.

If any installation, construction, or alteration of a Structure is made in violation of this Paragraph, the Board may record a notice of such violation in the Cobb County Land Records.

**7. USE RESTRICTIONS.**

Each Owner of a Lot shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of this Declaration, the Bylaws and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants or Occupants, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or Occupants.

Use restrictions regarding use of Lots and the Common Property are as follows and also as may be adopted by the Board in accordance with the terms hereof and as specified in the Bylaws.

**(a) Use of Lots.**

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

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

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

(3) the business activity conforms to all zoning requirements for the Community;

(4) the business activity does not increase traffic in the Community in excess of what would normally be expected for residential dwellings in the Community without business activity (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);

(5) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;

(6) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as determined in Board's discretion; and

(7) the business activity does not result in a materially greater use of common area facilities or Association services.

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

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

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

(b) **Landscaping.** No construction or alteration of any structure on the Lot, including by the way of illustration and not limitation, any building or part thereof, garage, porch, gazebo, shed, greenhouse or bathhouse, cage, covered or uncovered patio, tennis court, fence, curbing, paving, wall, tree, shrub, sign, signboard, mailbox, driveway, or any other temporary or permanent improvement to such Lot; any excavation, grading, fill ditch, diversion dam, or other thing, object, or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and any change in grade at any point on a Lot of more than six (6) inches, shall take place without the prior written approval of the Architectural Control Committee of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for landscaping may be included in the Design Standards.

(c) **Tree Protection.** Many Lots within the Community have designated tree protection areas. The dimensions of the tree protection area is available from the Cobb County Community Development Agency. No Owner shall remove a living tree having a diameter of six (6) inches or more (measured from a point of two (2) feet above ground level) from any Lot except for trees that are located within ten feet (10') of a drainage area, a sidewalk, a residence, or a driveway. Dead or diseased trees must be removed from a Lot after the Owner has submitted photographs and/or a certification of such condition from a certified tree specialist to the Architectural Control Committee or Board and received approval to remove the dead or diseased trees. The Architectural Control Committee or Board may require re-planting of trees or other appropriate landscaping after removal of trees. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property may be included in the Design Standards.

(d) **Outbuildings and Similar Structures.** No structure of a temporary nature, unless approved in writing by the ACC, shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, carport, barn or other structure may be used as a residence, either temporarily or permanently. However, this subparagraph shall not be construed to prevent Declarant from building and Owners from

maintaining garages that may be detached from the dwelling on a lot. Furthermore, this subparagraph shall not be construed to prevent Declarant and those engaged in development, construction, marketing, property management or sales from using sheds, trailers or other temporary structures for any of the foregoing purposes. In addition, nothing in this Declaration shall be construed to prevent Declarant from developing, constructing, marketing, or maintaining model homes or speculative housing within the Community. Further, no permanent structures shall be constructed within ten (10) feet of the edge of a permanent sanitary sewer easement (SSE) located in front or rear setbacks, within two (2) feet of a SSE located in side setbacks.

(e) **Temporary Buildings.** No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefore approved by the Architectural Control Committee or Board. No contractor or builder shall erect on any Lot any structure of a temporary nature for use in connection with construction on such Lot.

(f) **Setbacks.** No dwelling, nor any portion thereof, shall be erected less than thirty five (35) feet from the front line of Lot, thirty-five (35) feet from the rear line of the Lot and ten (10) feet from either side of a Lot side line. Each dwelling which is erected on a Lot shall be situated on such Lot in accordance with the building and setback line shown on the Recorded Plat, and in no event shall any dwelling be erected upon any Lot in a manner which violates such building and setback lines. For purposes of this requirement, all porches, patios, decks, shutters, awnings, eaves, gutters and other such overhangs will not be considered in violation thereof even though such structure shall extend beyond said building and setback lines if approved by the Architectural Control Committee or Board. In approving plans and specifications for any proposed dwelling, the Architectural Control Committee or Board may establish setback requirements for the location of such dwelling. Guidelines for setbacks may be included in the Design Standards. No dwelling shall be erected or placed on a Lot unless its location is consistent with such setbacks.

(g) **Dwelling Size.** Dwellings erected on any Lot shall have not less than one thousand six hundred (1,600) square feet of heated floor space.

(h) **Fences.** No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the Architectural Control Committee or Board of plans and specifications for such fences and walls. Guidelines relating to the design, location and use of fences and walls may be included in the Design Standards. Owners desiring to erect a fence shall submit a detailed drawing of the structure showing its relationship to all property lines. Metal fence posts and chain link fences (including vinyl-clad link) are prohibited. Welded-wire mesh may be used behind split rail or similar open wooden fencing with prior written approval of the ACC or Board.

(i) **Roads and Driveways.** No road or driveway shall be constructed or altered on any Lot without the prior written approval of the Architectural Control Committee or Board of plans and specifications for such roads and driveways. All driveways must be finished in a material specified in the Design Standards. Guidelines relating to the design and location of roads and driveways may be included in the Design Standards.

(j) **Air-Conditioning Units.** Except as may be permitted by the ACC, no window air conditioning units may be installed.

(k) **Lighting.** Except as may be permitted by the ACC, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) one (1) decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights between Thanksgiving Day and January 5<sup>th</sup>; or (e) front house illumination of model homes, if any.

(l) **Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, and similar items must be approved by the ACC. No awnings, shades or window boxes shall be attached to or otherwise placed on the exterior of any structure on a Lot without the prior written consent of the ACC.

(m) **Flags.** No flags or similar items shall be displayed on a Lot, except one (1) flag of the United States of America not exceeding ten (10) square feet in size may be attached to and displayed on a flag holder attached to the exterior portion of the first floor of a residence on a Lot. All such flags shall be in good condition.

(n) **Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ACC.

(o) **Play Equipment.** No play equipment, including basketballs goals, football posts or backboards shall be erected without the prior written consent of the ACC and all backboards shall be clear acrylic or smoke-colored.

(p) **Gardens and Hammocks.** No vegetable garden, hammock, hottubs or pool may be erected on any Lot without the prior written consent of the ACC and no such structure may be visible from any street.

(q) **Clotheslines.** No exterior clotheslines of any type shall be permitted upon any Lot.

(r) **Exterior Security Devices.** No visible exterior security devices, including, without limitation, window bars, shall be permitted on any residence or Lot without the approval of the ACC. Signs placed on the Lot or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device.

(s) **Fuel or Water Tanks.** No fuel tanks or water tanks shall be stored or maintained upon any Lot in such a manner as to be visible from any street or road or from any other Lot, unless used by Declarant, temporarily, in the ordinary course of developing the Community.

(t) **Swimming Pools.** Above ground swimming pools are prohibited.

(u) **Use of Common Property and Area of Common Responsibility.** There shall be no obstruction of the Common Property and Area of Common Responsibility, nor shall anything be kept, parked or stored on any part of the Common Property and Area of Common Responsibility without prior written Board consent, except as specifically provided herein.

With prior written Board approval, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Property for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Property hereunder shall assume, on behalf of himself/herself/themselves and his/her/their guests, Occupants and family, all risks associated with the use of the Common Property and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting

from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property.

(v) **Prohibition of Damage, Nuisance and Noise.** No Lot Owner or Occupant may use or allow the use of the Lot or Area of Common Responsibility in any manner which creates noises between the hours of 11:00 p.m. and 7:30 a.m. which can be heard by persons in another Lot that will, in the Board's sole discretion, unreasonably interfere with the rights, comfort or convenience of any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot.

No Owner, Occupant or agent of such Owner or Occupant shall do any work which, in the Board's reasonable opinion, would jeopardize the soundness or safety of the Community or any structure thereon, would reduce the value thereof, or would impair any easement or other interest in the Community, without prior written consent of all Association members and their Mortgagees.

No damage to or waste of the Area of Common Responsibility, or any part thereof, shall be permitted by any Owner or any Occupant, guest or invitee of any Owner. Each Owner and Occupant shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner or Occupant, or the Owner's or Occupant's guest or invitee.

It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's Lot. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law. However, any siren or device for security purposes shall contain a device, which causes it to automatically shut off within fifteen (15) minutes. All Owners and Occupants acknowledge and understand that the Declarant will be renovating and developing certain portions of the Community and the Additional Property and no such construction associated therewith shall be deemed a nuisance or discomfort pursuant to the terms hereof.

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

(x) **Pets.** No Owner or Occupant may keep any pets other than a reasonable number of generally recognized household pets in any portion of the Community, as determined in the Board's discretion.

No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors in areas which are not fully enclosed by a physical fence. No structure for the care, housing, or confinement of any pet shall be constructed or maintained in any part of the Community without prior written Board approval as provided in Paragraph 6 hereof. Feces left by pets upon the Common Property, on any Lot or in any dwelling, including the pet owner's Lot or dwelling, must be removed promptly by the owner of the pet or the person responsible for the pet.

No potbellied pigs may be brought onto or kept at the Community at any time. No pit bulldogs, pit bulldog mix breeds or other dogs determined in the sole discretion of the Board to be dangerous dogs may be brought onto or kept in the Community at any time by any Lot Owner, Occupant, or guest of an Owner or Occupant. Any pet which endangers the health of any Owner or Occupant of any Lot or which creates a nuisance or unreasonable disturbance, as may be determined in the Board's sole discretion, must be permanently removed from the Community upon seven (7) days' written notice by the Board. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet and/or obtain a court order requiring the Owner or Occupant to do so. Any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any member of the community may be removed by the Board without prior notice to the pet's owner.

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

(y) **Parking.** The Board may adopt reasonable rules limiting the number and location of vehicles that may be parked at the Community. Notwithstanding the foregoing, an Owner or Occupant of a Lot shall be permitted to park the maximum number of cars or similarly sized motor vehicles that can be parked in a garage according to its design capacity. Parking may also be permitted on other areas authorized in writing by the Board.

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

Boats, trailers, trucks with a load capacity of one (1) ton or more, full-size vans (excluding mini-vans or utility vehicles used as passenger vehicles), recreational vehicles (RV's and motor homes), vehicles used primarily for commercial purposes and containing visible evidence of commercial use (such as tool boxes or tool racks), and vehicles with commercial writings on their exteriors are also prohibited from being parked in the Community, except in garages or other areas designated by the Board as parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the Common Property during normal business hours for the purpose of serving any Lot or the Common Property; provided, that, without the written consent of the Board, no such vehicle shall be authorized to remain on the Common Property overnight or for any purpose except serving a Lot or the Common Property.

If any vehicle is parked on any portion of the Community in violation of this subparagraph or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Community stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Lot or dwelling, is obstructing the flow of traffic, is parked on any grassy area or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed or booted in accordance with this subparagraph, 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. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

(z) **Signs.** No sign, poster, or notice of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the ACC, except (a) when offering a Lot or residence for sale or for lease, not more than one (1) professionally lettered "For Sale" or "For Rent" sign consistent with the Community-Wide Standard and having a maximum area of four (4) square feet and a maximum height of four (4) feet above ground level, (b) one professional lawn mounted security sign consistent with the Community-Wide Standard, (c) security decals not exceeding five (5) inches placed in windows, (d) any signs required by legal proceedings, and (e) signs erected by Declarant. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs.

(aa) **Rubbish, Trash, and Garbage.** All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except as provided herein. Rubbish, trash, and garbage shall be disposed of in appropriate sealed bags and placed in proper receptacles for collection. Declarant, however, hereby expressly reserves the right on behalf of itself and Approved Builders to dump and bury rocks and trees on property within the Community as needed for efficient construction. Trash, garbage, debris or other waste matter of any kind may not be burned within the Community except by Declarant and Approved Builders during construction. No receptacle or rubbish, trash, and garbage shall be placed upon the curb adjacent to the Lot more than twelve (12) hours before such items are scheduled to be collected or removed from the Community. All receptacles shall be removed within twelve (12) hours of the time upon which rubbish, trash, and garbage was scheduled to be collected or removal from the Community.

(bb) **Unightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community, except within a dwelling. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture, grills, and bicycles may be kept on the patio or deck serving the Lot.

(cc) **Drainage/Irrigation Systems.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. If drainage grating and/or

headwall are located on a Lot, the Owner of such Lot shall be responsible for ensuring that such drainage grating and/or headwall is clear of obstruction and debris to allow for proper drainage flow. Furthermore, no Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except with the prior written approval of the Board of Directors. Declarant hereby reserves for the benefit of Declarant and the Association and their respective successors and assigns a perpetual easement across the Community property for the purpose of altering drainage and water flow (with the permission of Cobb County, if necessary). Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

(dd)**Entry Features.** Owners shall not alter, remove or add improvements to any entry features constructed by Declarant on any Lot, or any part of any easement area associated therewith without the prior written consent of the ACC.

(ee)**Retaining Walls.** No retaining wall of any kind shall be placed, erected, allowed or maintained upon any portion of the Community, including any Lot, unless the type and location thereof shall have received the prior written consent of the ACC. Any retaining wall visible from the street shall be made of brick or stone, and shall be consistent with the architectural style of the structures and improvements located upon such Lot. Walls made of plain concrete or concrete block shall be prohibited.

(ff) **Erosion Control; Contamination.** No activity which may create erosion or siltation problems in any portion of the Community shall be undertaken on any Lot without the prior written approval of the Board of Directors or its designee of plans and specifications for the prevention and control of such erosion or siltation. Such plans and specifications shall be designed by a professional engineer licensed in the State of Georgia and all costs and expenses related thereto shall be borne exclusively by the Lot Owner. The Board of Directors or its designee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include, by way of example and not of limitation, physical devices for controlling the run-off and drainage of water, special precautions in grading, clean-up activities and requiring landscaping as provided for herein. No activity which results in contamination of or any damage to any stream, water course or any other Lot shall be conducted on any Lot, and each Owner shall be liable for all resulting damages from such activity and for restoration of a property damaged from contamination resulting from or attributable to such activity.

(gg)**Abandoned Personal Property.** Personal property, other than an automobile as provided for in subparagraph (y) of this Paragraph, is prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property without prior written Board permission. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property and/or on the front door of the property owner's dwelling, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed.

Neither the Association nor any officer or agent thereof shall be liable to any person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property.

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

(ii) **Mailboxes.** The Approved Builders shall provide a mailbox for each Lot. In the event such mailbox is destroyed or damaged, it shall be replaced or restored to its original appearance, unless prior approval is given by the ACC for a different mailbox.

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

(kk) **Garages Doors.** All garage doors facing the street shall remain closed at all times, except for necessary use, ingress, and egress.

(ll) **Garbage Cans, Woodpiles, etc.** All garbage cans, woodpiles, filters and related equipment, air conditioning compressors and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All structures and/or improvements used to conceal or screen the foregoing items shall be subject to the prior written approval of the ACC. Furthermore, all rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves on behalf of itself, the right to dump and bury rocks and trees on property within the Community as needed for efficient construction. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except by Declarant during construction.

(mm) **Antennas and Satellite Dishes.** No transmission antenna, of any kind, may be erected anywhere in the Community without written approval of the Board of Directors or the Architectural Control Committee. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) larger than one meter in diameter shall be placed, allowed, or maintained upon any portion of the Community, including a Lot. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association authorized by the FCC, both as may be amended from time to time. Such items shall be installed in the least conspicuous location available on the Lot which permits reception of an acceptable signal. Except as provided in this subparagraph, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors in any portion of the Community, whether attached to a home or structure or otherwise; provided, however, that the Association shall have the right to erect, construct and maintain such devices.

(nn) **Leasing.** Except as provided herein, the leasing of a residence located on a Lot shall be prohibited. "Leasing," for the purposes of this Declaration, is defined as regular, exclusive occupancy of a residence located on a Lot by any Person other than the Owner; provided, however, for the purposes of this Declaration, leasing shall not include the occupancy of a residence located on a Lot by the child or

parent of an Owner. For purposes hereof, occupancy by a roommate of an Owner who occupies the residence as such Owner's primary residence shall not constitute "leasing" hereunder. The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce these provisions.

(1) Leasing. Lots may be leased only in their entirety; no fraction or portion of a Lot may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form that is deemed acceptable. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Lot. The Owner must provide 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. Each Owner and each lessee, by occupancy of a Lot, covenants and agrees that any lease for a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Lot:

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

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

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

(4) Liability for Assessments. When an Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the

Association all unpaid annual, special and specific 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 herewith, 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.

- (i) Notwithstanding the above, this subparagraph (nn) shall apply to any leasing transaction entered into by Declarant (regardless of whether said lease is entered into prior to or after the expiration of Declarant's right to appoint and remove officers and directors of the Association), the Association, or the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, provided, however, such Persons shall not be required to comply with the provision regarding a minimum lease term and shall not be required to obtain the approval of the Association prior to entering into any lease agreement.

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

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

## 8. **INSURANCE.**

- (a) **Hazard Insurance on Common Property.** The Association's Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property. This insurance shall include fire and extended coverage, including coverage for vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.
- (b) **Association Public Liability and Directors' and Officers' Liability Insurance.** The Board shall obtain a public liability policy applicable to the Common Property, Landscape Easement Area and Community Driveway covering the Association, its members and Owners for all damage or injury caused by the negligence of the Association or any of its members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one million (\$1,000,000.00) dollars.
- (c) **Premiums and Deductible on Association Policies.** Premiums for all insurance obtained by the Association shall be a Common Expense of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from

the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

- (d) **Policy Terms.** All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee, for the respective benefited parties, as further identified in subparagraph (ii) below. Such insurance shall be governed by the provisions hereinafter set forth:
  - (i) All policies shall be written with a company licensed to do business in Georgia.
  - (ii) All policies on the Common Property shall be for the benefit of the Association and its members.
  - (iii) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
  - (iv) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
  - (v) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.
  - (vi) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
    - (1) a waiver of subrogation by the insurer as to any claims against the Board, the Association's manager, the Owners and their respective tenants, servants, agents, and guests;
    - (2) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
    - (3) a provision that no policy may be canceled, invalidated, suspended or subjected to nonrenewal on account of any one or more individual Owners;
    - (4) a provision that no policy may be canceled, invalidated, suspended, or subjected to nonrenewal on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;
    - (5) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
    - (6) that no policy may be canceled or substantially modified or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association.

- (e) **Additional Association Insurance.** In addition to the other insurance required by this Paragraph, the Board 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 directors, officers, employees, and other persons handling or responsible for the Association's funds or dishonesty insurance. The amount of fidelity coverage or dishonesty insurance shall be determined in the directors' best business judgment, but if reasonably available, shall not be less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on financial controls which take one or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two Board members must sign any checks written on the reserve account. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, and flood insurance, if and to the extent necessary to satisfy the requirements of The Mortgage Corporation or the Federal National Mortgage Association.
- (f) **Individual Lot Owner Insurance.** Each Owner shall carry blanket all-risk casualty insurance, if reasonably available, or if not reasonably available, fire and extended coverage, on his or her Lot and structures constructed thereon meeting the same requirements as set forth in subparagraphs (a) and (d) of this Paragraph for insurance on the Common Property.
- (g) **Insurance Deductibles.** In the event of an insured loss under the Association's casualty policy, any required deductible shall be considered a maintenance expense to be paid by the Person or Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Lot or a Lot and the Common Property, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total cost of repair, or otherwise as the Board reasonably determines equitable, unless the insurance policy provides that the deductible will apply to each Lot separately. If any Owner fails to pay the deductible when required hereunder, then the Association can pay the deductible and assess the cost to the Owner or Owners pursuant to Paragraph 4(e) hereof.

## 9. **REPAIR AND RECONSTRUCTION AFTER CASUALTY DAMAGE.**

In the event of damage to or destruction of all in any part of the Community insured by the Association as a result of fire or other casualty, unless Declarant and eighty (80%) percent of the Lot Owners other than Declarant, vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. Declarant's vote is required in this Paragraph only as long as Declarant owns property for development and/or sale within the Community or has the unilateral right to annex additional property into the Community pursuant to Paragraph 16(a). In the event of substantial damage or destruction, each

institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Lot Owner with respect to the distribution of proceeds to any such Lot.

- (a) **Cost Estimates.** Immediately after a fire or other casualty causing damage to portions of the Community insured by the Association, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.
- (b) **Source and Allocation of Proceeds.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Lot Owners without the necessity of a vote of the members or compliance with Paragraph 4(e) above. If, after repair and reconstruction is completed, there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.
- (c) **Plans and Specifications.** Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Community was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board.
- (d) **Encroachments.** Encroachments upon or in favor of Lots which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Lot Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Community was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.
- (e) **Construction Fund.** The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Lot Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Paragraph, to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), Owners and/or personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board.
- (f) **Damage to or Destruction of Dwellings on Lots.** In the event of damage to or destruction of structures on a Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Paragraph 6 of this Declaration, unless a determination not to rebuild is made by the Lot Owner in cases of substantial damage or destruction. Unless otherwise approved in writing by the Board, the Owner of the damaged Lot shall complete all restoration and rebuilding of the improvements on the Lot within six (6) months of the date of the casualty, damage or destruction of the improvements. If the structure is substantially destroyed and a

determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris, sod all portions of the Lot on which the removed structure was located, and, thereafter, continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

**10. EMINENT DOMAIN.**

Whenever all or any part of the Common Property shall be taken or conveyed in lieu of or under threat of condemnation by any authority having power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. If the taking involves a portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking at least seventy-five (75%) percent of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of Paragraph 9, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

**11. EASEMENTS.**

Declarant does hereby establish and create perpetual, non-exclusive (except as and to the extent provided to the contrary herein) easements in, to, over, across, under and through portions of the Community for the purposes contemplated in this Paragraph for the use and benefit of the respective Owners and their successors and assigns. The scope, nature and extent of the easements described in this Paragraph shall be as follows:

(a) **Easements for Use and Enjoyment.** Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to his or her Lot, subject to the following provisions:

- (i) The right of the Association to borrow money for the purpose of improving the Area of Common Responsibility, or for constructing, repairing, or improving any facilities located or to be located on the Area of Common Responsibility, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Area of Common Responsibility. However, the Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges reserved or established for the benefit of Declarant, any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community (Any provision in this Declaration or in any Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights in the Mortgage by the holder of the Mortgage in the event of a default shall not cancel or terminate any rights, easements or privileges reserved or established in this Declaration for the benefit of Declarant, any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community.);
- (ii) The right of the Association, acting through its Board of Directors, and without a vote of the Members, to dedicate or grant licenses, permits, easements and rights-of-way over, under, across and through the Area of Common Responsibility;
- (iii) The right of the Association to dedicate or transfer all or any portion of the Area of Common Responsibility subject to any conditions agreed on by the members of the

Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by Declarant (so long as Declarant owns any property for development and/or sale within the Community) and the Owners representing at least two-thirds (2/3) of the eligible votes in the Association (other than Declarant so long as the consent of Declarant is required);

- (iv) All other rights of the Association, the Declarant, Owners and Occupants set forth in this Declaration or in any deed conveying Area of Common Responsibility to the Association; and
- (v) All encumbrances and other matters shown by the public records affecting title to and/or use of the Area of Common Responsibility.

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

(b) **Easements for Utilities**. There is reserved to the Declarant and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining: (a) all utilities serving the Community, or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, (b) water runoff and storm drainage systems, and (c) any other services such as, but not limited to, a master television antenna system, or cable television system which may be installed to serve the Community (hereinafter collectively referred to as the "Utilities"). It shall be expressly permissible for the Declarant, the Association, or the designee of either, to do or to authorize the installation, repair, replacement and/or maintenance of the wires, conduits, cables and other equipment related to providing any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or Board, as applicable, shall have the right to grant such easement.

(c) **Easement for Entry**. In addition to the right of the Board to exercise self-help as provided in Paragraph 14 hereof, the Association shall have the right, but not the obligation, to enter upon any property within the Community for emergency, security, and safety reasons. This right may also be exercised by the Board of Directors, officers, agents, employees and managers of the Association, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or Occupant. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event that an Owner fails or refuses to cure the condition upon request by the Board.

(d) **Easement for Association Maintenance**. Declarant expressly reserves a perpetual and irrevocable easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to enforce the covenants in force, to perform its maintenance and repair obligations and to any other activity contemplated directly or indirectly by this Declaration. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' Lot, reasonable steps shall be taken to protect the property, and damage shall be repaired by the Person causing the damage at its sole expense.

(e) **Easements for Maintenance and Repair**. There shall be reciprocal appurtenant easements between adjacent Lots for the purpose of maintaining or repairing the improvements, including, without

limitation, landscaping located on each Lot which easement shall extend to a distance of not more than five (5) feet as measured from any point on the common boundary between the Lots and along a line perpendicular to such boundary at such point. The easement shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the Lot over which this easement is exercised which is caused by the maintenance or repair work. The damaged portions of such Lot shall be restored to substantially the same condition as existed prior to damage.

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

(g) **Easement for Entry Features.** There is hereby reserved to the Declarant and the Association an easement over and upon the Community (but only that portion) for ingress, egress, installation, construction, landscaping and maintenance of entry features and similar streetscapes for the Community, including lines and facilities for utilities. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant on any Lot, or any part of any easement area associated therewith without the prior written consent of the ACC.

(h) **Pedestrian Easements.** Declarant hereby expressly reserves perpetual, non exclusive pedestrian easements for access to the Area of Common Responsibility for the benefit of the Association and Owners if and to the extent any such easement is shown on any plat for the Community recorded by Declarant in the land records of the county where the Community is located.

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

(k) **Easement for Drainage.** There is hereby reserved to the Declarant and granted to the Association a blanket easement across the Community for creating and maintaining satisfactory storm water drainage in the Community; provided, however, such easement area shall not include any portion of the Community within the boundaries of any improvements within the Community owned by a party other than the Association. This easement shall include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. It is anticipated that increased storm water run off across downstream property will result from the construction of impervious surface within or adjacent to the Community. Neither the Declarant, any Approved Builder, the Association or any Owner constructing according to plans and specifications approved under Paragraph 6 hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction within the Community.

(j) **General.** Each Lot shall be subject to those easements, if any, shown or set forth on the recorded Survey(s) for the Community, as amended from time to time as well as the easements now or hereafter established by Declarant in this Declaration or by any other documents filed for record in the Office of the Clerk of Superior Court of Cobb County, Georgia.

## 12. DECLARANT'S RIGHTS AND EASEMENTS

(a) **Transfer of Declarant's Rights.** Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or in the Bylaws, as applicable. Furthermore, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Cobb County. Nothing in this Declaration shall be construed to require the Declarant or any successor to develop any of the property set forth in Exhibit "B" in any manner whatsoever.

(b) **Construction and Sale Period.** Notwithstanding any provisions contained in the Declaration, Bylaws or Articles of Incorporation of the Association, use restrictions, rules and regulations, design guidelines, and any amendments thereto, for so long as the Declarant owns any property for development and/or sale within the Community, Declarant reserves an easement across all property in the Community for Declarant to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's development, construction, and sales activities related to property described on Exhibits "A" to this Declaration, including, but without limitation:

(i) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Lot or Lots;

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

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

(iv) the right to grant easements over, under, in or on the Community, including, without limitation, the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community;

(v) the right to carry on sales and promotional activities in the Community;

(vi) the right to erect and maintain signs (including, but not limited to, "For Sale" signs, directional signs, marketing and other promotional signs); and

(vii) the right to construct and operate business offices, construction trailers, model residence on a Lot, and sales offices. Declarant may use Lots, offices, or other buildings owned or leased by Declarant as model residences and sales offices.

Notwithstanding anything to the contrary stated herein, for so long as the Declarant owns any property for development and/or sale within the Community or has the unilateral right to annex additional

property into the Community pursuant to Paragraph 16(a) hereof, Declarant shall have the right to keep open the gates leading into the Community (if any) during the sales office's hours of operation and shall have the right to retain one or more dumpster(s) on any portion of the Community, including on a Lot.

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

(c) **Approved Builder.** Approved Builder shall have the same easement rights as Declarant necessary for the construction and sales activities of Lots, including, without limitation, those easement rights granted to Declarant in this Paragraph.

### 13. **MORTGAGEE'S RIGHTS.**

(a) **Approval of Actions.** Unless at least two-thirds (2/3) of the first Mortgagees or Lot Owners give their consent, the Association shall not:

- (i) by act or omission seek to abandon or terminate the Community or the Association;
- (ii) change the pro rata interest or obligations of any individual Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
- (iii) partition or subdivide any Lot;
- (iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property (the granting of utility easements or rights-of-way for public purposes and the granting other easements for the benefit of the Association shall not be deemed a transfer within the meaning of this clause); or
- (v) use hazard insurance proceeds for losses to the Common Property for other than the repair, replacement, or reconstruction of the Common Property.

The provisions of this subparagraph shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Lot Owners where a larger percentage vote is otherwise required by the Association Legal Instruments for any of the actions contained in this Paragraph.

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

(c) **Right to Information.** Upon written request to the Association, identifying the name and address of the holder and the Lot number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:

(i) any condemnation loss or any casualty loss which affects a material portion of the Common Property;

(ii) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Lot Owner of any other obligation under the Association Legal Instruments which is not cured within sixty (60) days;

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

(iv) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

(d) **Right to Financial Statement.** Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

(e) **Leasing and Sales.** Notwithstanding anything to the contrary herein contained, the provisions of subparagraphs 7(nn) and 7(oo) governing leases and sales respectively shall not apply to impair the right of any first Mortgagee to: (i) foreclose or take title to a Lot pursuant to remedies contained in its Mortgage; (ii) take a deed or assignment in lieu of foreclosure; or (iii) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

#### 14. **AUTHORITY AND ENFORCEMENT.**

The Community shall be used only for those uses and purposes set out in this Declaration. Every Owner and Occupant shall comply with this Declaration, the Bylaws and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Lot Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote and/or to use the Area of Common Responsibility for violation of any duty imposed under the Declaration, Bylaws or Association rules. However, nothing herein shall authorize the Association or the Board of Directors to deny ingress and egress to or from a Lot. If any Occupant of a Lot violates the Declaration, Bylaws or Association rules, a fine may be imposed against the Owner and/or Occupant, as set forth below. The failure of the Board to enforce any provision of the Declaration, Bylaws or Association rules shall not be deemed a waiver of the right of the Board to do so thereafter.

In any enforcement action taken by the Association under this Paragraph, to the maximum extent permissible, all costs incurred by the Association in abating a violation or otherwise taking action to enforce the Declaration, Bylaws or Association rules, including reasonable attorney's fees actually incurred, may be assessed against the violating Owner and/or Occupant pursuant to Paragraph 4 above.

(a) **Fining and Suspension Procedure.** The Board shall not impose a fine, suspend the right to vote or suspend the right to use the Common Property, unless and until the Association has sent or delivered written notice to the violator as provided in subsection (i) below. However, compliance with this subparagraph shall not be required for the following: (i) late charges on delinquent assessments; (ii) suspension of voting rights if an Owner is shown on the Association's records to be more than thirty (30) days delinquent in any payment due the Association, in which case suspension of the right to vote shall be automatic; (iii) suspension of the right to use the Common Property if an Owner is shown on the Association's records to be more than thirty (30) days delinquent in any payment due the Association, in which case suspension of the rights to vote and to use the Common Property shall be automatic.

(i) **Notice.** If any provision of the Declaration or Bylaws or any Association rule is violated, the Board shall send the violator written notice identifying the violation and fine(s) and/or suspension(s) being imposed and advising the violator of the right to request a hearing before the Board to contest the violation or the fine(s) and/or suspension(s) or to request reconsideration of the fine(s) and/or suspension(s). Fines and/or suspensions may be effective or commence upon the sending of such notice or such later date specified in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge the fine(s) and/or suspension(s). 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.

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

(b) **Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking regulations) and/or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity for compliance with the procedure set forth in subparagraph (a) above.

The Association or its duly authorized agent shall have the power to enter Lot upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws or the rules and regulations; provided, however, the violating Owner or Occupant is given at least two (2) days prior written notice requesting that the violation be removed and abated and the property restored to substantially the same condition as existed prior to the structure, thing or condition being placed on the property and causing the violation. Such removal, abatement and restoration shall be accomplished at the violator's sole cost and expense. If the Association exercises its right subject to this subparagraph, all costs of self-help, including but not limited to, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner or Occupant and shall constitute a lien against the Lot. All such amounts shall be collected as an assessment pursuant to this Declaration. Additionally, the Association shall have the authority to record in the Cobb County land records a notice of violation identifying any uncured violation of the Declaration, Bylaws or rules and regulations regarding the Lot.

(c) **Failure to Enforce.** Notwithstanding the above, no right of action shall exist against the Association for failure of enforcement where: (i) the Board determines that the Association's position is

not strong enough to justify taking enforcement action; (ii) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (iii) the Owner or party asserting a failure of enforcement possesses an independent right to bring an enforcement action therefore at law or in equity and has failed to do so.

#### 15. AMENDMENTS.

This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith, (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration, (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration, or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, so long as Declarant owns any property for development and/or sale within the Community or has the unilateral right to annex additional property into the Community pursuant to Paragraph 16(a) hereof, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots and the consent of Declarant (so long as the Declarant owns any property for development and/or sale within the Community or has the unilateral right to annex additional property into the Community pursuant to Paragraph 16(a) hereof). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. Notwithstanding the foregoing, no provision of this Declaration which benefits, reserves or grants special rights to the Declarant shall be amended, modified, altered or deleted without the Declarant's prior written approval so long as the Declarant owns any property for development and/or sale within the Community or has the unilateral right to annex additional property into the Community pursuant to Paragraph 16(a) hereof.

Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in the Office of the Clerk of the Superior Court of Cobb County, Georgia within one (1) year of the date of recordation of such amendment in the Cobb County, Georgia land records.

#### 16. WITHDRAWAL OF PROPERTY

(a) Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Paragraph for the purpose of removing any portion of the Community then owned by Declarant or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community.

(b) Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Community submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such

property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant.

(c) **Acquisition of Additional Common Property.** Declarant may convey to the Association additional real estate, improved or unimproved, which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

#### 17. **GENERAL PROVISIONS.**

(a) **Security** THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE COMMUNITY DESIGNED TO MAKE THE COMMUNITY SAFER THAN THEY OTHERWISE MIGHT BE. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD OF DIRECTORS, DECLARANT, ANY SUCCESSOR DECLARANT, AND ACC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ACC, IF ANY, MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, ASSAULT OR OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF ANY LOT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

(b) **Right of Action.** All Owners hereby acknowledge and agree that the Association shall not be entitled to institute any legal action against anyone on behalf of any or all of the Owners which is based on any alleged construction defect (as such term is defined in O.C.G.A. § 8-2-36) or any damage allegedly sustained by any Owner by reason thereof, except the Association may bring an action against a Contractor

to recover damages resulting from construction defects in any part of the Area of Common Responsibility. Such action may be maintained only after:

- (i) The Association first obtains the written approval of each Owner whose interest in the Area of Common Responsibility will be the subject of the action;
- (ii) A vote or written agreement of the Owners to which at least a majority of the votes of the members of the Association are allocated;
- (iii) The Board and the Contractor have met in person and conferred in a good faith attempt to resolve the Association's claim or Contractor has definitively declined or ignored the requests to meet with the Board; and
- (iv) The Association has otherwise satisfied all of the pre-action requirements for a claimant to commence an action as set forth in O.C.G.A. § 8-2-35, et seq.

Notwithstanding the above, once the Declarant ceases to own any property for development and/or sale within the Community, the Association's Board of Directors may negotiate the resolution of any alleged defect(s) in the Area of Common Responsibility on behalf of the Owners and shall have the right and authority to settle and release on behalf of any and all of the Owners claims, causes of action, damages and suits involving the same. Any such settlement and release shall bind all Owners and their successors and assigns. No amendment to this Declaration shall (i) modify, alter, or delete any provision of this Declaration that benefits the Declarant or any rights, privileges, easements, protections, or defenses of the Declarant; or (ii) alter the rights of the Owners or the Association in relationship to the Declarant, without the written consent of the Declarant attached to and recorded with such amendment.

(c) **Disclosures.** Each Owner and Occupant acknowledge the following:

- (i) The Community is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future;
- (ii) The Community contains tree protection areas as noted and shown on the Recorded Plat, which dimensions are available from the Cobb County Community Development Agency.
- (iii) Lots 5, 6 and 31 lie within an undisturbed stream buffer area along the creek measuring fifty (50) feet from the top of the bank as noted and shown on the Recorded Plat. Owners are prohibited from taking any action that in any way disturbs changes, affects or alters any portion of the stream buffer.
- (iv) The views from an Owner's dwelling or Lot may change over time due to, among other circumstances, additional development and the removal or addition of landscaping;
- (v) No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future;
- (vi) No representations are made regarding the schools that currently or may in the future serve the Unit;

- (vii) The sizes, architectural styles and prices of any future homes constructed in the Community may be vary significantly within the Community, and
- (viii) Owner and Occupant shall be responsible to become fully acquainted with neighborhood and other off-site conditions affecting the Community by (1) diligently inspecting and (2) reviewing all reasonably available governmental records, maps and documents
- (ix) The cost of upgrades in a home may not necessarily result in a commensurate increase in property values.
- (x) No representations are made that the systems in a new home, including, by way of example only, heating and air conditioning and electrical systems will operate or perform at a level or standard greater than the minimum specifications of the manufacturer.
- (xi) Wood contains moisture which dries over time, and as wood in the home dries it may naturally shrink, crack and warp causing, among other things, sheetrock tears, nail pops, cracks in baseboards and warping of doors. If any of the above occurs, it is part of the normal aging of the home and not a construction defect.
- (xii) Certain materials used for fixtures in a new home (including, but not limited to, brass/chrome plumbing fixtures, brass/chrome bathroom accessories and brass/chrome light fixtures) are naturally subject to discoloration, corrosion and/or oxidation over time and that the same do not constitute defects in these materials.
- (xiii) Natural wood has considerable color variation due to its organic nature. There may be shades of white, red, black or even green in areas. In addition, mineral streaks may also be visible. Grain pattern or texture will vary from consistent to completely irregular; wood from different areas of the same tree can also have variations in pattern or texture. It is these variations that give wood its aesthetic quality. These variations in grain will in turn accept stain in varying amounts, which will show throughout the wood products from one door to the next, one panel to the next or one piece of wood to the next. Also, cabinet finishes (including gloss and/or matte finishes) will not be entirely consistent and some minor irregularities will be apparent. Owner agrees to accept these conditions if any of the same are present in the wood in the home and agrees that the same are not defects.
- (xiv) Marble and granite are natural pieces of stone. Marble and granite veins and colors may vary drastically from piece to piece and are all different. Marble and granite also have chips and shattering veins which look like scratches. The thickness of the joints between marble, granite or other materials against which they have been laid will vary and there will be irregularities in surface smoothness. Marble and other stone finishes may be dangerously slippery and Seller assumes no responsibility for injuries sustained as a result of exposure to or use of such materials. Periodic use

of professionally approved and applied sealant is needed to ensure proper maintenance of the marble and granite, and it is the Owner or Occupant's responsibility to properly maintain these materials. Marble, granite and other stone surfaces may scratch, chip or stain easily. Such movement may in turn cause grout to crack or loosen or cause some cracking in the stone flooring which may need to be repaired as part of normal home maintenance.

- (xv) Mold spores are present in all homes and that mold and/or mildew can grow in any portion of the home that is exposed to elevate levels of moisture. It is necessary for Owner or Occupant to keep the humidity in the home low, vent clothes dryers to the outdoors, ventilate kitchens and bathrooms by opening the windows, by using exhaust fans, or by running the air conditioning to remove excess moisture in the air, facilitate evaporation of water from wet surfaces and take any other measures to retard and prevent mold and mildew from accumulating in the home. Owner agrees to clean and dust the home on a regular basis and to remove visible moisture accumulation, mold or mildew on windows, walls and other surfaces as soon as reasonably possible. Owner agrees not to block or cover any of the heating, ventilation and air-conditioning ducts in the home. Owner acknowledges that the Property may contain toxic mold. Seller is not an expert with regard to mold or the health effects of mold exposure. Accordingly, it is the sole responsibility of Owner to retain appropriate professionals to inspect any property that the Owner may purchase to determine the presence of any toxic mold.
- (xvi) While the drainage system for surface water runoff on the Community will be constructed in accordance with applicable governmental standards, any part of the Community may still be subject to erosion and/or flooding during unusually intense or prolonged periods of rain.
- (xvii) The floor plans and the dimensions and square footage calculations shown thereon are only approximations. Any Owner who is concerned about any representations regarding the floor plans should do his/her own investigation as to the dimensions, measurements and square footage of his/her Lot and dwelling;
- (xviii) All Owners and Occupants acknowledge and understand that the Declarant will be constructing/renovating portions of the Community and engaging in other construction activities related to the construction of Common Property and additional phases of the Community. Such renovation and construction activities may, from time to time, produce certain conditions on the Community, including, without limitation: (A) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (B) smoke; (C) noxious, toxic, or corrosive fumes or gases; (D) obnoxious odors; (E) dust, dirt or flying ash; (F) unusual fire or explosion hazards; (G) temporary interruption of utilities; and/or (H) other conditions that may threaten the security or safety of Persons on the Community. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions on the Community resulting from renovation and construction

activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of the Declaration.

- (xix) Exposed concrete surfaces which are not heated and cooled are subject to cracking due to (A) water penetration, (B) expansion and contraction of the concrete with temperature changes, and (C) building settlement.

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

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

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

(g) **Electronic Records, Notices and Signatures.** Notwithstanding any other portion of this Declaration, records, signatures and notices shall not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the Bylaws shall govern the giving of all notices required by this Declaration.

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

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

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

(k) **Headings.** The headings of each Paragraph and subparagraph hereof, as to the contents of each Paragraph and subparagraph, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Paragraph or subparagraph to which they refer.

(l) **Preparer.** This Declaration was prepared by Seth G. Weissman, Weissman, Nowack, Curry & Wilco, P.C., One Alliance Center, 4th Floor, 3500 Lenox Road, Atlanta, Georgia 30326.

IN WITNESS WHEREOF, the undersigned, the Declarant herein, hereby executes this instrument by and through its duly authorized officers and under seal this 8th day of July, 2005.

**DECLARANT:**

**KIRK LANE DEVELOPMENT, LLC,**  
a Georgia Limited Liability Company

By: \_\_\_\_\_

Stacy W. Hanley, its Vice President

Attest: \_\_\_\_\_

Cindy Freese

Sworn to and subscribed to before  
me this 8th day of July,  
2005.

Witness

Notary Public

[Notary Seal]

Notary Public, Cobb County, Georgia  
My Commission Expires Mar. 6, 2007

N.P.  
SEAL

**EXHIBIT "A"**  
**SUBMITTED PROPERTY**

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 279 and 280 of the 20<sup>th</sup> District, 2<sup>nd</sup> Section, Cobb County, Georgia, and being 17.58 acres, more or less, as shown on survey for Kirk Lane Development, LLC, Bank of North Georgia, and Fidelity National Title Insurance Company, dated May 14, 2004, last revised February 17, 2005, prepared by Gaskins Surveying & Engineering Company, Christopher A. Evans, Georgia Registered Land Surveyor No. 2784, and being more particularly described as follows:

BEGINNING at a point located at the intersection of the easterly right of way of Tarpley Road with the northerly right of way of Kirk Lane (having a 50 foot right of way); thence running in a northerly direction as measured along the easterly right of way of Tarpley Road, the following courses and distances: north 00 degrees 15 minutes 13 seconds east for a distance of 198.39 feet to a point; north 01 degrees 20 minutes 10 seconds east for a distance of 1,062.71 feet to a #4 rebar and corner; thence running south 81 degrees 49 minutes 41 seconds east for a distance of 216.32 feet to a #5 rebar found and corner; thence running north 01 degrees 40 minutes 53 seconds east for a distance of 223.98 feet to a 2.5" open top pipe found and corner; thence running south 61 degrees 32 minutes 52 seconds east for a distance of 730.40 feet to a #5 rebar found and corner located on the northwesterly right of way of Kirk Lane; thence running in a southwesterly and westerly direction as measured along the northwesterly and northerly right of way of Kirk Lane, the following courses and distances: along the arc of a curve, an arc distance of 235.07 feet (said arc being subtended by a chord bearing south 28 degrees 59 minutes 25 seconds west, a chord distance of 235.06 feet, and having a radius of 9,478.34 feet) to a point; south 28 degrees 16 minutes 48 seconds west for a distance of 188.48 feet to a point; along the arc of a curve, an arc distance of 115.59 feet (said arc being subtended by a chord bearing south 25 degrees 25 minutes 10 seconds west, a chord distance of 115.54 feet, and having a radius of 1,157.62 feet) to a point; south 22 degrees 33 minutes 32 seconds west for a distance of 126.03 feet to a point; along the arc of a curve, an arc distance of 198.15 feet (said arc being subtended by a chord bearing south 32 degrees 10 minutes 34 seconds west, a chord distance of 198.19 feet, and having a radius of 593.17 feet) to a point; south 41 degrees 47 minutes 36 seconds west for a distance of 166.48 feet to a point; along the arc of a curve, an arc distance of 210.06 feet (said arc being subtended by a chord bearing south 40 degrees 38 minutes 16 seconds west, a chord distance of 210.04 feet, and having a radius of 5,207.88 feet) to a point along the arc of a curve, an arc distance of 115.75 feet (said arc being subtended by a chord bearing south 62 degrees 31 minutes 34 seconds west, a chord distance of 112.66 feet and having a radius of 143.90 feet) to a point; south 85 degrees 34 minutes 11 seconds west for a distance of 134.53 feet to the point of BEGINNING.