

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
KENSINGTON GREEN**

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION.

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EXHIBIT "A" - PROPERTY DESCRIPTION

EXHIBIT "B" - BYLAWS OF KENSINGTON GREEN HOMEOWNERS ASSOCIATION, INC.

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
KENSINGTON GREEN**

THIS DECLARATION is made on the date hereinafter set forth by **DUBOSE-PACES FERRY, LTD.**, a Georgia corporation (“DuBose-Paces”), and **DREADNOUGHT DEVELOPMENT, LLC**, a Georgia limited liability company (“Dreadnought”) (hereinafter collectively called “Declarants” and individually sometimes referred to as a “Declarant”);

W I T N E S S E T H

WHEREAS, DuBose-Paces and Dreadnought is/are the owner(s), of the real property described in Exhibit “A” hereof; and

WHEREAS, Declarants desire to subject the real property described in Exhibit “A” hereof 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, Declarants hereby declare that the real property described in Exhibit “A” attached hereto and by this reference incorporated herein is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, mortgaged and otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens, hereinafter set forth, which are for protecting the value and desirability of and which shall run with the title to the real property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of real property now and hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each owner of all or any portion thereof.

Article I **Definitions**

The following words, when used in this Declaration or in any Supplementary Declaration, shall have the following meanings:

1.1 “Articles of Incorporation” means the Articles of Incorporation of Kensington Green Homeowners Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.2 “Association” means Kensington Green Homeowners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

1.3 “Board of Directors” or “Board” means the appointed or elected body of the Association, vested with the authority to manage the affairs of the Association under the Georgia Nonprofit Corporation Code, O.C.G.A. Section 14-3-101, *et seq.*

1.4 “Bylaws” means the Bylaws of Kensington Green Homeowners Association, Inc., attached to this Declaration as Exhibit “B” and incorporated herein by this reference as may be amended from time to time.

1.5 “Common Property” means any all real and personal property, and the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.6 “Community” refers to that certain real property described in Exhibit “A”, attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein. The Community constitutes a residential property owners development which has been submitted and is submitted to the Georgia Property Owners’ Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie, 1982), as such Act may be amended from time to time.

1.7 “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 of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarants.

1.8 “Declarants” means **DuBose-Paces Ferry, Ltd.**, a Georgia corporation, and **Dreadnought Development, LLC**, a Georgia limited liability company, collectively and their successors-in-title and assigns; provided that in a recorded instrument, such successor-in-title or assignee is designated as a Declarant hereunder by one or more of the then holders of the rights of Declarant hereunder. A reference herein to a Declarant or any Declarant means a reference to either DuBose-Paces or Dreadnought acting alone and without the consent of the other. Subject, however, to all limitations now or hereafter set forth in a Limited Warranty Deed from DuBose-Paces to Dreadnought, it is the intent of this Declaration that each Declarant, acting alone, shall have the exclusive power to exercise rights of Declarant as to the portion of the Community being developed or upon which improvements are being constructed by that Declarant. For example, Dreadnought shall be the exclusive Declarant relative to Lots acquired by Dreadnought even though such Lots were initially developed by DuBose-Paces and DuBose-Paces shall be the exclusive Declarant for all other Lots. All other acts of the Declarants, including, without limitation, the construction on or the granting of easements relative to the Common Property shall be by unanimous consent of both Declarants. The conveyance of any Lot by a Declarant to another Declarant shall be deemed to include an assignment of all rights of Declarant relative to the Lot(s) conveyed and no separate assignment shall be required to vest in the successor Declarant all such conveyed rights. Nothing contained herein nor the acts of the Declarants shall be construed as creating a partnership or joint venture between Declarants.

1.9 “Lot” means any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes a single-family dwelling site, including a Townhome Unit as hereinafter defined, as shown on a plat recorded in the Office of the Clerk of Superior Court of Cobb County, Georgia. The ownership of each Lot shall include, and there shall automatically pass with the title to each Lot as an appurtenance thereto membership in the Association and all rights and interest of an Owner in the Common Property.

1.10 “Mortgage” means any and all instruments used for the purpose of encumbering or conveying title to real property in the Community as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt or deed of trust.

1.11 “Mortgagee” means the holder of the Mortgage.

1.12 “Occupant” means any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.13 “Owner” means the record owner, whether one or more Persons, of the fee simple title to any Lot within the Community but does not include any Mortgagee.

1.14 “Person” includes any individual, individual acting in a fiduciary capacity, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company or other organization, recognized as a separate legal entity under Georgia law.

1.15 “Supplementary Declaration” means an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.

1.16 “Total Association Vote” means the votes attributable to the entire membership of the Association as of the record date for such action (including votes of the Declarants), whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. If, for example, and without limitation, a majority of the Total Association Vote is required to approve a matter, such matter must receive more than half of the votes attributable to all existing members of the Association as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. As a further illustration, if a majority vote is required to approve a matter (and the term Total Association Vote is not used), such matter must receive more than half of the votes cast by the members present and entitled to vote on the matter.

1.17 “Townhome Unit” shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site for a townhome which will be attached by one or more party walls to another townhome. Where the dwelling on a Townhome Unit is attached by a party wall to one or more other dwellings, the boundary between Townhome Units shall *be a* line running along the center of the party wall separating the Townhome Units. The ownership of each Townhome Unit shall include the exclusive right to use and possession of any and all portions of the heating and air conditioning units which are appurtenant to and serve each Townhome Unit (including, but not limited to, compressors, conduits, wires and pipes) and any porch, deck, patio, steps, wall, roof, foundation, sunroom or any similar appurtenance as may be attached to a Townhome Unit when such Townhome Unit is initially constructed. The ownership of each Townhome Unit shall include, and there shall automatically pass with the title to each Townhome Unit as an appurtenance thereto,

whether or not separately described, membership in the Association and all of the rights and interest of an Owner in the Common Property, as herein provided.

1.18 “Act” means the Georgia Property Owners’ Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie 1982), as such Act may be amended from time to time. The Declaration and the Community are hereby submitted to the Act.

Article 2

Property Subject To This Declaration

2.1 Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants, conditions, restrictions and easements hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used occupied and encumbered subject to this Declaration is the real property described in Exhibit “A” attached hereto and by this reference made a part hereof.

2.2 Annexation. Upon the written consent of (a) the owner(s) thereof; (b) the Declarants; and (c) the Owners of at least two-thirds (2/3) of the Lots, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Office of the Clerk of Superior Court of Cobb County, Georgia a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

Article 3

Association Membership and Voting Rights

3.1 Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Mortgagees and the conveyance of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the designee of a member, but in no event shall more than one office be held for each Lot owned. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this Section shall restrict the number of votes cast or the number of the officers and directors appointed by the Declarants.

3.2 Voting: Members shall be entitled to one vote for each Lot owned. When more than one Person holds an ownership interest in a Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or referendum. The vote attributable to a Lot shall be suspended in the event more than one Person seeks to exercise it. The Board of Directors may suspend the voting rights of any Owner for any period during which any past due assessment against any Lot of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations.

3.3 Notice of Sale, Lease or Acquisition. Prior to the sale of lease of a Lot, the Owner shall prove the Association with written notice of the name of the purchaser or lessee, as the case may be, and such other information as the Board may reasonably require. Upon acquisition of a Lot each new Owner shall provide the Association with written notice of the name and mailing address of the Owner and such other information as the Board may reasonably require.

Article 4
Assessments

4.1 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Lots, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) Townhome assessments, if applicable; (iii) special assessments provided for herein; and (iv) specific special assessments which may be assessed hereunder or in accordance with Section 44-3-225(a) of the Act, including, but not limited to, reasonable fines imposed in accordance with the terms of this Declaration or the Bylaws.

All such assessments, together with charges, interest, costs, and reasonable attorneys' fees actually incurred (including post-judgment attorneys' fees, costs and expenses), and if the Board so elects, rents, all in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot and Lot Owner against which each assessment is made. Such amounts shall also be the personal obligation of the person or entity who was the Owner of such Lot at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. The Association, in the Board's discretion, may, but shall not be obligated to, record a notice of such lien in the Cobb County, Georgia records evidencing the lien created under the Act and this Declaration. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever. All payments shall be applied first to costs, including, but not limited to, attorneys' fees, then to late charges, then to interest, and then to delinquent assessments.

4.3 General Assessments. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. The general assessment to be levied against each Lot shall be an equal amount for all Lots. The Board shall cause the budget and the assessments to be levied for the year to be delivered to each member at least thirty (30) days prior to the due date of any general assessment. The budget and the general assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and the Declarants. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue. General assessments 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 for delinquents. Unless otherwise provided by the Board, the general assessment shall be paid in one annual installment. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance, and expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others.

4.4 Townhome Assessments. The Association may levy assessments against the Townhome Units to fund actual and estimated expenses incurred by the Association for the primary benefit of the

Townhome Units. Townhome assessments shall be levied as specifically budgeted from time to time by the Board of Directors pursuant to this Declaration. If applicable, the Board shall create Townhome budget covering the estimated costs to be incurred by the Association for the primary benefit of the Townhome Units. The Board shall cause the budget and the assessments to be levied for the year to be delivered to each Owner of a Townhome Unit at least thirty (30) days prior to the due date of any Townhome assessment. The Townhome budget and the Townhome assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote of the Townhome Units and the Declarants. Notwithstanding the foregoing, however, in the event a majority of the Total Association Vote of the Townhome Units and the Declarants disapprove the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue.

4.5 Special Assessments. The Association may levy a special assessments if approved by two-thirds (2/3) of the Total Association Vote and the Declarants. Special assessments shall be pad as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.6 Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; and (b) 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. In addition to the above, the Board may specifically assess Owners and Lots for Association expenses that are occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot(s), including, but not limited to, attorneys' fees incurred by the Association in enforcing the Declaration, Bylaws or Association rules.

4.7 Lien Priority. The lien provided for in Section 4.2 hereof shall have priority as provided in the Act.

4.8 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 any assessment or other charge, or any part thereof, is not paid in full within 10 days of the due date, then: (1) the Board may accelerate any unpaid installments of the annual assessment or other assessments, if paid in installments; (2) a late charge equal to the greater of \$10.00 or 10% of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner; (3) interest at the rate of 10% per annum or such higher rate as may be permitted by the Act shall accrue from the due date; (4) the Board may suspend voting rights, Common Property use rights, membership rights and privileges, and Association-provided services to the Lot, including but not limited to utility services if paid for as an Association common expense; (5) the Board may bring legal action against the Owner to collect all sums owed under this Declaration; and (6) the Board may take any other lawful action authorized under this Declaration, the Bylaws or Georgia law to collect all such amounts. The delinquent Owner shall be assessed and responsible for all reasonable attorneys' fees actually incurred by the Association in collecting any sums owed hereunder.

4.9 Date of Commencement of Assessments. Assessments shall commence in general when the Board of Directors first determines a budget and levies assessments. The assessments provided for

herein shall commence as to a particular Lot on the date that the Lot is first occupied for residential purposes. A Lot shall be occupied for residential purposes when it has been improved with a dwelling and has been conveyed to an Owner who intends to occupy the dwelling, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy.

4.10 Budget Deficits During Declarant Control. For so long as the Declarants have the authority to appoint the directors and officers of the Association, Declarants shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the general, Townhome, special and specific assessments collected by the Association in any fiscal year. Each Declarant shall advance a pro-rata amount based on the number and type of Lots owned by each Declarant or its successors or assigns on the date of any advance; provided, however, no advance shall be required by a Declarant that has not obtained a building permit to construct a townhome or detached house on at least one Lot owned by that Declarant.

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

4.12 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 business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee as may be authorized by the Act as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein, if such statement is reasonably relied upon in connection with the conveyance of any Lot or the issuance of any Mortgage on a Lot.

4.13 Initiation Fee. Upon the first sale of each and every Lot after it has been improved with a residence for which a certificate of occupancy has been issued an initiation fee in the amount of \$500.00 shall be collected from the purchaser at the closing of such sale for the benefit of the Association. The initiation fee shall constitute a specific assessment against the Lot, shall be in addition to, not in lieu of, the annual general assessment and shall not be considered an advance payment of such assessment. The initiation fee may be used by the Association for any purpose, including, without limitation, the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions of this Declaration.

Article 5

Maintenance; Common Property; Services

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. The Association shall also maintain (whether or not constituting Common Property) (a) all Community entry features, including entry area landscaping and any irrigation system and the expenses for water and electricity, if any, provided to all such entry features; (b) all storm water detention/retention ponds and storm water drainage facilities serving the Community, if and to the extent such facilities are not maintained by the owner of such facilities, the owners of nearby property served by such facilities or a government body; (c) the private water distribution system serving the Community as provided in Section 5.4; (d) all water and sewer pipes or facilities which serve more

than one (I) Lot, whether located within or without the boundaries of the structure or Lot, to the extent that such pipes and facilities are not maintained on an ongoing basis by a public or private utility company or by a governmental entity; (e) all Community greenbelt and open spaces; (f) all Community private streets and alleys; (g) landscaping and yard maintenance for all of the Lots; (h) all perimeter fencing originally installed by Declarants; and (i) all property outside of Lots located within the Community which was originally maintained by the Declarants. Community landscaping to be maintained by the Association shall include landscaping within any medians or islands located in or along the right-of-way of private streets within the Community. 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 and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. In the event that the Association determines that the need for maintenance, repair, or replacement which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement, and all costs thereof not paid for by insurance, shall be assessed against the Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Community-Wide Standard.

5.2 Owner's Responsibility. Except for maintenance performed on a Lot by the Association pursuant to Section 5.1, or 5.3, if any, all maintenance of the Lot and all structures, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, and exterior lighting in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; and repairing and painting (or other appropriate external care) of improvements located on a Lot. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement and all costs thereof shall be assessed against the Owner and the Lot as a specific assessment. This provision shall not apply to any Lot(s) owned by the Declarants unless improved with a dwelling and occupied as a residence.

5.3 Yard Maintenance. The Association shall maintain and keep in good repair the landscaping improvements located on the exterior portions of the Lots. Maintenance of lawns by the Association shall be performed at the expense of the Association and shall be limited to mowing, edging and fertilizing/weed control and shall not include any responsibility for replacing dead or dying grass, bushes, shrubs, trees, or other vegetation. Such maintenance shall be performed at a level to be determined in the sole discretion of the Board; provided, however, that all Lots maintained by the Association must receive approximately equal attention and must be maintained according to the same standard. The Board of Directors in its sole discretion may leave portions of the Lots as undisturbed natural areas and may change the landscaping of the Lots at any time and from time to time or may, with the consent of the Declarants, change the level of yard maintenance performed or, for example, maintain front yards only. Any common irrigation system installed by the Declarants or the Association shall be Common Property, operated, maintained, repaired and replaced by the Association. The deed of conveyance of any Lot shall not include any right, title

or interest in such irrigation system, if any. The Board of Directors may promulgate rules setting forth the extent of landscaping maintenance to be performed by the Association and the rights of Owners with respect to adding or modifying landscaping improvements, including, for example allowing seasonal flowering plants on certain Lots at the expense of the Owner. In the event that the Owner of a Lot obtains approval to construct a fence in accordance with Section 7.17 of this Declaration, the Association shall no longer be obligated to maintain the landscaping within enclosed portions of the Lot and such landscaping shall be the sole responsibility of the Owner.

5.4 Private Water System. The water distribution system in the Community is private and shall be owned and maintained by the Association as Common Property. The Association shall maintain, repair and replace the master water meter if and to the extent not maintained by the applicable water utility company, the meters serving each Lot, if any, and all pipes connecting the master water meter and the meters on each Lot. Except as provided below, all charges for water and sewer usage billed through the Association shall be assessed to the applicable Lot based on usage, if individually metered, and if not shall be assessed equally to each Lot as a specific assessment in accordance with Section 4.6 hereof. Provided however, the Owners shall be responsible for water usage applicable only to Lots for which a certificate of occupancy has been issued and any irrigation or other water used by the Association. Until all Lots have been improved with a townhome or detached house and a certificate of occupancy has been issued the Declarants shall pay for all water usage applicable to unsold Lots and development activity which shall be prorated between the Declarants based on the number of unfinished Lots owned by a Declarant for which a building permit has been issued for the construction of a townhome or detached house.

5.5 Conveyance of Common Property by Declarants to Association; No Implied Rights. Any Declarant may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and maintained by the Association for the benefit of its members. The Association hereby constitutes and appoints Declarants as its agent and attorney-in-fact to accept on behalf of the Association any such conveyance to the Association and to execute on behalf of the Association any and all documents, including, without limitation, deeds and transfer tax declaration forms, necessary or convenient to effectuate and document any such conveyance to the Association. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise. The Declarants shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. The Declarants may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as such Declarant may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by a Declarant, or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the Office of the Clerk of Superior Court of Cobb County, Georgia.

5.6 Partition. The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Lots located within the Community.

5.7 Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within sixty (60) days after such taking, an alternative plan is approved by at least seventy-five percent (75%) of the Total Association Vote and the consent of the Declarants. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Property shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

5.8 Liability. Owner, Occupants and their guests shall use the Common Property at their own risk and shall assume sole responsibility for their personal belongings used or stored there. The Association, the Declarants and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on the Common Property. The Association shall not be liable for injury or damage to any Person or property (a) caused by the elements or by an Owner or any other Person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or Occupant for loss or damage, by theft or otherwise, of any property of such Owner or Occupant.

5.9 Residential Pest Control. The Association may, but shall not be obligated to, contract with a pest control company to disperse chemicals for the extermination of insects and pests within the Lots and Common Property. In the event the Association chooses to provide such pest control, the Association and its duly authorized contractors, representatives, and agents shall have an easement to enter the homes on the Lots for the purpose of dispensing chemicals for the exterminating of insects and pests. Lot Owners shall either provide a key to the homes for the purpose of such entry or have someone available at such times as are designated by the Board of Directors to allow entry into the home for this purpose. All charges for pest control provided by the Association shall be assessed to each Lot equally as part of the general assessment in accordance with Section 4.3 hereof. If a Lot Owner, for any reason, refuses pest control services, such Owner shall nevertheless still be obligated to pay the full general assessment. The Association shall not be liable for any illness, damage or injury caused by or arising out of the dispensing of these chemicals for this purpose.

5.10 Garbage Pick-Up. The Association may, but shall not be required to, contract with a private trash collection company to pick up all usual and customary household trash on a regular basis. Trash and recycling receptacles shall be placed at the curb no earlier than 5:00 p.m. the day before pick up and shall be removed within twenty-four (24) hours. Trash pickup shall also be subject to such reasonable rules and regulations as the Board of Directors may adopt. All charges for trash collection shall be assessed to each Lot equally as part of the general assessment in accordance with Section 4.3 hereof.

5.11 The Declarants and the Association may, but shall not be obligated to, contract with an alarm company to install security alarms in all the homes on the Lots. The monthly service fee for the security alarm shall be assessed to each Lot equally as part of the general assessment in accordance with Section 4.3 hereof. By accepting a deed to a Lot, each Owner shall acknowledge and agree to the following:

(a) Neither the Declarants nor the Association shall be responsible for the security of Owners, Occupants or their family members, guests, invitees or property. THE ASSOCIATION, THE DECLARANTS, THEIR PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANTS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS, SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY, NOR

SHALL ANY OF THE FOREGOING BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. FURTHERMORE, THERE IS NO GUARANTEE FROM ANYONE THAT NON-UNIT OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE HOMES AND COMMIT CRIMINAL ACTS NOR IS THERE ANY GUARANTEE THAT CRIMINAL ACTS IN THE COMMUNITY WILL NOT *BE* COMMITTED BY OTHER OWNERS OR OCCUPANTS. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ALL OCCUPANTS OF THE OWNER'S LOT THAT THE ASSOCIATION, THE DECLARANTS, THEIR PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS, ARE NOT INSURERS AND THAT EACH OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO PROPERTY, TO LOTS, AND TO THE CONTENTS OF THE HOMES ON THE LOTS AND THE STRUCTURES THEREON RESULTING FROM THE ACTS OF THIRD PARTIES.

(b) Each Owner shall look solely to the applicable governmental authority for the provision of law enforcement and policy protection.

(c) The Alarm System will be installed based upon the representation of vendors regarding the operation and performance capabilities of the components of the Alarm System.

(d) THE DECLARATIONS DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AND MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER REGARDING THE ALARM SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR THE PURPOSES FOR WHICH IT WAS DESIGNED.

(e) Each owner shall use their respective Alarm System in the proper manner and within the rules and regulations relating thereto as may be adopted from time to time by the Board of Directors.

Article 6

Architectural Standards

6.1 **General.** No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling, construction of impervious surface, building, exterior alteration of existing improvements, change in the exterior color of any existing improvement, and planting and removal of landscaping materials), shall be commenced or placed upon any part of the Community unless installed by a Declarant or an affiliate of a Declarant, approved in accordance with this Article, or otherwise expressly permitted under this Declaration. Any Owner may remodel, paint or redecorate the interior of structures on the Lot without approval hereunder. However, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of the Declarants, affiliates of a Declarant, nor to improvements to the Common Property by or on behalf of the Association. Any builder acquiring Lots from a Declarant may submit its plans for approval by that Declarant, which approval will not be unreasonably withheld, and thereafter no further approval shall *be* required under this Article for such builder to construct improvements on Lots consistent with the approved plans. This Article may not be amended without the written consent of the

Declarants until each Lot has been improved with a dwelling for which a certificate of occupancy has been issued.

6.2 Guidelines and Procedures. Except as provided above, no exterior construction, addition or alteration shall be made unless and until plans and specifications shall have been submitted in writing to and approved by a Declarant. Such plans and specifications shall be of sufficient detail to allow a Declarant to make its review and, to the extent required by the Declarant, shall show the nature, kind, shape, height, materials and location of the proposed improvement. The Declarants may adopt written design and development guidelines and application and review procedures, which may provide for a review fee. Each Declarant shall have sole and full authority to prepare and to amend, from time to time at its sole discretion and without notice, the architectural guidelines relative to any improved Lots being sold by that Declarant. The Declarants shall make the architectural guidelines available to Owners and builders who seek to engage in construction upon all or any portion of the Community and such Owners and builders shall conduct their operations strictly in accordance therewith. If a Declarant fails to approve or to disapprove submitted plans and specifications within thirty (30) days after receipt of all required plans and specifications, such approval shall be deemed to have been given. As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration. In the discretion of the Declarants, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Declarants shall be the sole arbiter of such plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and they shall be entitled to stop any construction in violation of these restrictions. The Declarants and their representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such entry. If construction does not commence on a project for which plans have been approved within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to a Declarant for reconsideration.

6.3 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 the Declarants assume no liability or responsibility therefor or for any defect in any structure constructed from such plans and specifications. Neither Declarants, the Association, 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 and specifications and every Owner agrees that such Person or Owner will not bring any action or suit against Declarants, the Association 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.

6.4 No Waiver. The approval of a Declarant of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval or consent of a Declarant, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications or drawings or matters whatever subsequently or additionally submitted for approval or consent.

6.5 Variances. Notwithstanding anything to the contrary contained herein, the Declarants shall be authorized to grant individual variances from any of the provisions of this Declaration and the architectural guidelines if they determine that waiver of application or enforcement of the provision in a particular case is dictated by unique circumstances, such as, but not limited to, topography, natural obstructions, hardship, aesthetic considerations or environmental considerations and would not be inconsistent with the overall scheme of development for the Community. No variance shall (a) be effective unless in writing, (b) be inconsistent with the overall scheme of development for the Community, or (c) prevent the Declarants from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.6 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from a Declarant, an Owner shall, at its own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarants and their agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Lot as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the architectural guidelines may be excluded by the Declarants from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws. In such event, neither the Declarants, the Association or the officers, directors, members, employees and agents of any of them shall be held liable to any Person for exercising the rights granted by this paragraph. In addition to any other remedies available to the Declarants, in the event of noncompliance with this Article, the Declarants may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the Declarants shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

6.7 Architectural Review Committee. Until (a) the Declarants no longer have the right to unilaterally annex additional property to the Community; and (b) each Lot has been improved with a dwelling for which a certificate of occupancy has been issued, the Declarants shall have the sole right, power and authority under this Article. There shall be no surrender of this right except in a written instrument in recordable form executed by Declarants and recorded in the Office of the Clerk of Superior Court of Cobb County, Georgia. Upon expiration or earlier surrender in writing of all or a portion of such right and authority, the Board of Directors shall appoint an Architectural Review Committee of the Association ("ARC"), which shall then have such jurisdiction over architectural control under this Article as may have been relinquished by the Declarants. The Declarants may in their sole discretion relinquish architectural control as to certain types of improvements or modifications while retaining control over all other building and construction in the Community. For example and without limitation, the Declarants may relinquish control over modifications of existing structures to the ARC while retaining all authority to review and approve new home construction. Any right, power or authority of the Declarants which may be relinquished prior to the termination of the rights of Declarants hereunder shall be by written recorded instrument only and no such right, power or authority shall be relinquished by implication or otherwise. The establishment of an advisory ARC shall not be deemed to be a relinquishment by Declarants of any of their right, power and authority hereunder. After the termination of all rights of Declarants hereunder, the ARC shall have all right, power and authority to review and approve building and construction activity within the Community hereunder and this Article shall then be read and interpreted as if any reference to the Declarants in this Article 6 were a reference to the ARC.

6.8 Limitation. Notwithstanding anything contained in this Declaration to the contrary, so long as DuBose-Paces owns any Lot in the Community, all construction on Townhome Units shall conform to the conceptual plans thereof previously approved by DuBose-Paces.

Article 7
Use Restrictions and Rules

7.1 **General – Rules and Regulations.** Each Lot, including each Townhome Unit, in the Community shall be subject to the use restrictions and rules set forth in this Article. The Board of Directors may, from time to time, with the consent of Declarants and without a vote of the members, promulgate, modify or delete rules and regulations applicable to the Community. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote and the consent of Declarants.

7.2 **Residential Use.** Each Lot shall be used for single-family residential purposes exclusively. Leasing of a Lot for single-family residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant in residence at the Lot may conduct business activities within the dwelling unit so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Community, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. 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: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity.

7.3 **Leasing.** In order to preserve the character of the Community as a residential community of Owner-occupied homes, leasing of Lots shall be governed by the restrictions imposed by this Section. Except as provided herein, leasing of Lots is prohibited.

Owners may lease their Lots only if: (1) the Owner is a Grandfathered Owner (applicable only to the Grandfathered Lot); (2) the Owner is not a Grandfathered Owner but has received a Leasing Permit from the Board as provided below; or (3) the Owner is not a Grandfathered Owner but has received a Hardship Leasing Permit from the Board as provided below.

The intent of this provision is to generally limit leasing to 20% of the Lots, but to provide grandfathering to Owners who lawfully lease their Lots on the Effective Date, and to provide the Board flexibility to both allow additional leasing when it determines market conditions so warrant and allow temporary leasing of Lots in certain undue hardship situations.

(a) **Definitions.**

- (i) **“Authorized Corporate Occupant”** means an Occupant of a Lot who is an officer, director, shareholder, member or employee of an Owner that is a corporation; a manager or member of an Owner that is a limited liability company; a partner of an Owner that is a partnership; or a trustee or beneficiary of an Owner that is a trust; provided the no rent is paid or consideration is paid to any person or entity for such occupancy or by or on

behalf of such Occupant. A person's designation as an Authorized Corporate Occupant shall terminate automatically upon the termination of such person's relationship with the entity holding record title to the Lot.

- (ii) **“Authorized Family Member”** means a Lot Owner's spouse, former spouse, parent, child, brother, sister, grandparent or grandchild, which relationship shall be demonstrated to the Board on request by providing a copy of a birth certificate, marriage license or similar document satisfactory to the Board.
- (iii) **“Effective Date”** means the date that this Amendment is recorded in the Cobb County, Georgia land records.
- (iv) **“Grandfathered Owner”** means an Owner who: (1) is lawfully leasing his or her Lot on the Effective Date and has been lawfully leasing his or her Lot for the immediately preceding 6 months; and (2) within 30 days of the Effective Date, provides the Board with a copy of the Owner's lease agreement(s) which has/have been in effect during the 6 months immediately prior to the Effective Date.
- (v) **“Grandfathered Lot”** means the Lot owned and leased by a Grandfathered Owner on the Effective Date hereof, as defined in subsection (iv) above.
- (vi) **“Leasing”** means the occupancy of a Lot by any Person(s) other than:
 - (A) the Lot Owner or an Authorized Family Member of the Lot Owner;
 - (B) an Authorized Corporate Occupant. However, the Authorized Corporate Occupant may not be changed more frequently than once every 24 months without the Board's written consent, and the name of each Authorized Corporate Occupant shall be designated in writing to the Board prior to any occupancy of the Lot by such person; or
 - (C) a roommate of any person identified above, which person identified above also occupies the Lot as his or her primary residence.

A Lot may be considered to be leased hereunder even if no rent is paid to the Owner. For the purpose of this provision, any lease purchase arrangement, lease with an option to purchase, agreement for deed, or bond for title shall be considered a lease hereunder.

- (vii) **“Leasing Cap”** means the maximum combined total number of outstanding Leasing Permits, Hardship Leasing Permits and Grandfathered Lots that are permitted before additional Leasing Permits may be issued hereunder. **Except as provided herein, the Leasing Cap shall be 20% of the Lots in the Community.** Notwithstanding the above, the Board of Directors, in its sole discretion, may, but shall not be obligated to, increase or decrease the Leasing Cap up to an additional 5% of the Lots in the Community, for such duration as the Board determines reasonable, but not less than one year, if the Board determines that the economic environment, financial market conditions and real estate market conditions in the metropolitan-Atlanta area are such that the failure to allow additional leasing could significantly adversely affect the Association or Community.

(b) **Grandfathered Lot Leasing.** Grandfathered Owners may lease their Grandfathered Lots, in accordance with this Section, without having to obtain a Leasing Permit. Grandfathering and Grandfathered status hereunder shall automatically expire on the date the Grandfathered Owner conveys title to the Grandfathered Lot to any other person (other than the Owner's spouse, former spouse, parent, child, brother, sister, grandparent or grandchild). The Board of Directors, in its discretion, with written notice to the Lot Owner, also may terminate grandfathering and Grandfathered status of any Lot hereunder, after 30 days' written notice to the Owner, if:

- (i) the Grandfathered Owner becomes delinquent in the payment of any assessments or other charges owed to the Association hereunder;
- (ii) the Grandfathered Owner or any Occupant of the Lot violates any applicable law or ordinance; or
- (iii) the Grandfathered Owner or any Occupant of the Lot violates the Declaration, Bylaws, Association rules or regulations, and fails to fully cure that violation within the 30-day notice period.

(c) **Leasing Permits.** If an Owner is not a Grandfathered Owner and wishes to lease the Owner's Lot, then the Owner may apply in writing to the Board of Directors for a Leasing Permit. Owner requests for Leasing Permits must be in writing and provide such information as the Board may reasonably require.

The Board of Directors may approve an Owner's request for a Leasing Permit if: (i) the Owner has owned and occupied the Lot as his or her principal and primary residence for at least 12 consecutive months at any point of time prior to requesting a Leasing Permit; and (ii) the total combined number of current, outstanding Leasing Permits, Hardship Leasing Permits and Grandfathered Lots is less than the Leasing Cap.

Notwithstanding the above or anything to the contrary herein, the Board may deny a Leasing Permit to any Owner if the Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge or if the Owner or any Lot Occupant is otherwise in violation of the Declaration, Bylaws, any Association rules and regulations, or any applicable law or ordinance.

If the total combined number of current Leasing Permits, Hardship Leasing Permits and Grandfathered Lots equals or exceeds the Leasing Cap, then no additional Leasing Permits (except for Hardship Leasing Permits) shall be issued until that number falls below the applicable Leasing Cap.

Any Owner who has been denied a Leasing Permit because the Leasing Cap is satisfied shall be placed on a waiting list to be issued such a permit, if the Owner so desires. The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the waiting list for a Leasing Permit. All Leasing Permits are valid only as to a specific Owner and Lot and are not transferable between either Lots or Owners (including a subsequent Owner of a Lot where a permit was issued to the Owner's predecessor in title).

(d) **Hardship Leasing Permits.** If an Owner is not a Grandfathered Owner, is denied a Leasing Permit, and believes that leasing the Owner's Lot is necessary to eliminate or avoid a substantial undue hardship to the Owner, then the Owner may apply in writing to the Board of Directors for a Hardship Leasing Permit.

A written Hardship Leasing Permit will allow an Owner to temporarily lease his or her Lot, provided that such leasing is in strict accordance with the terms of the permit and this Section. The Board of Directors shall have the authority to establish conditions as to the issuance and use of such permits consistent with this Section. All Hardship Leasing Permits are valid only as to a specific Owner and Lot and are not transferable between either Lots or Owners (including a subsequent Owner of a Lot where a permit was issued to the Owner's predecessor in title).

To be considered for a Hardship Leasing Permit, the Owner must apply in writing to the Board of Directors and provide information and documentation sufficient to the Board of Directors to review and determine whether a Hardship Leasing Permit is necessary or appropriate. The Board shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship; (2) the harm, if any, which will result to the Community if the permit is approved; (3) the number of Hardship Leasing Permits which have been issued to other Owners; (4) the Owner's ability to cure the hardship; and (5) whether previous Hardship Leasing Permits have been issued to the Owner.

The Board has sole discretion whether to grant a Hardship Leasing Permit, and the existence of a hardship does not guaranty that an Owner is entitled to or will receive a Hardship Leasing Permit; such permit is discretionary. The Board shall have broad discretion in determining what constitutes an undue hardship.

Except as otherwise approved in writing by the Board, Hardship Leasing Permits expire one year after the date issued. Owners may apply for additional Hardship Leasing Permits at the expiration of a Hardship Leasing Permit, if the circumstances warrant.

(e) Expiration and Revocation of Leasing Permits and Hardship Leasing Permits. Leasing Permits and Hardship Leasing Permits are automatically revoked upon the sale or transfer of the Lot to a third party (excluding sales or transfers to an Owner's spouse, former spouse, parent, grandparent, child, grandchild, brother or sister). Hardship Leasing Permits also are automatically revoked upon the failure of an Owner to execute and commence an authorized lease of the Lot within 90 days of the issuance of the Hardship Leasing Permit. Leasing Permits also automatically expire: (i) two years from the date issued; or (ii) if the Lot is not subject to an authorized and approved lease for more than 90 consecutive days.

The Board of Directors, in its discretion, also may terminate any Leasing Permit or Hardship Leasing Permit hereunder, after 30 days' written notice to the Owner, if:

- (i) the Owner becomes delinquent in the payment of any assessments or other charges owed to the Association hereunder;
- (ii) the Owner or any Occupant of the Lot violates any applicable law or ordinance; or
- (iii) the Owner or any Occupant of the Lot violates the Declaration, Bylaws, Association rules or regulations, and fails to fully cure that violation within the 30-day notice period.

If a Leasing Permit expires or is revoked, the Owner may request another Leasing Permit or, if such Leasing Permit is not available because the Leasing Cap is satisfied, the Owner may request to be placed on the leasing waiting list.

(f) **Leasing Administration Fee; Early Lease Termination.** In addition to annual assessments, special assessments, and other charges provided for under this Declaration or the Bylaws, each Owner executing, commencing, renewing or extending a lease on a Lot after the Effective Date shall be required to pay the Association a non-refundable leasing administration fee (“Leasing Administration Fee”) in an amount equal to the costs the Association incurs to administer and monitor leasing in the community, but which amount shall in no event exceed the total of two months of assessments (or one sixth (1/6) of the annual assessments) applicable to the Lot. For the purposes of this Section, executing or commencing a lease on a Lot shall include, but not be limited to, entering into a new lease agreement, renewing an existing lease agreement, and beginning a new year under a multi-year lease agreement. The Lease Administration Fee shall constitute a specific assessment and shall be due upon the date in which the lease is executed or commences.

In addition to the above, if any Owner terminates or cancels, or permits the termination or cancellation of, any lease prior to the expiration of its original term, the Board may prohibit the Owner from leasing the Lot again during the remainder of the original lease term.

(g) **Prohibition on Certain Occupants.** No person is permitted to occupy a Lot pursuant to a lease hereunder if such person: (1) is registered or required to be registered on or under the Georgia Sexual Offender Registry, pursuant to O.C.G.A. Section 42-1-12; (2) has been convicted of any felony for a crime involving physical violence against any person or animal in any jurisdiction of the United States; or (3) is listed on any law enforcement most wanted list.

(h) **Leasing Provisions.** When leasing is permitted under this Section, it shall be governed by the following provisions:

- (i) **General Leasing Provisions.** The Association may engage or delegate to a third party all or any of the rights, responsibilities or tasks assigned to the Association hereunder, acting at the direction of the Board of Directors. Except for authorized roommates of an Owner as provided above, Lots may be leased only in their entirety pursuant to a single lease. All leases must be for an initial term of not less than one year and not more than the remaining term of the Leasing Permit or Hardship Leasing Permit, except with written Board approval. There shall be no subleasing of Lots or assignment of leases, except with prior written Board approval. Lots may not be leased, rented or used for short-term hotel-type use, stay or occupancy.

All leases shall be in writing and shall contain provisions complying with the requirements of this Section. All leases executed, modified, renewed or extended after the Effective Date also must include a completed Lease Terms Exhibit attached hereto and incorporated herein by reference. The provisions of the Lease Terms Exhibit are incorporated into each lease of any Lot executed, modified, renewed or extended after the Effective Date, whether or not expressly stated therein, and into the terms of any tenancy or occupancy of a Lot even if no written lease or agreement exists between the Owner and the Occupant.

- (A) **Notice Prior to Leasing.** At least 14 days before entering into a lease of any Lot, the Owner shall provide the Board of Directors with: (1) written notice of the Owner's intention to lease his or her Lot; (2) verification that the Owner has obtained a Leasing Permit or Hardship Leasing Permit or is authorized to lease as a Grandfathered Owner; (3) a copy of the proposed lease, which must include the Lease Terms Exhibit provided for herein; (4) the names, phone numbers and email addresses of all of the proposed Occupants of the Lot; (5) the Owner's Lot address, and the Owner's phone number, email address, work location, work phone number and physical street address to be occupied by the Owner when the Lot is leased; (6) confirmation of the Tenant Screening required hereunder; and (7) such other information required by the Board. The Owner must provide the lessee copies of the Declaration, Bylaws and Association rules and regulations. **Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed tenant.**
- (B) **Notice After Lease Execution.** The Owner of a leased Lot shall provide the Board with a copy of the executed lease and Lease Terms Exhibit within 10 days after executing a lease for the Lot and within 10 days of request by the Board during the lease term. If any of the information regarding the Occupant required above, or other information regarding occupancy of the Lot, changes during the term of any leasing of the Lot, the Owner and Occupant shall update and notify the Board in writing of such changes within 30 days of the date of such change.
- (C) **Sanctions for Failure to Provide Notice.** If an Owner fails to provide the Association a copy of the lease and notice of leasing as provided herein, or an Owner otherwise leases a Lot in violation of this Section, the Association may fine the Owner an initial fine of up to \$500.00, plus additional daily fines for continued violation of these provisions, in addition to revoking Grandfathered status, Leasing Permits or Hardship Leasing Permits hereunder, and all other remedies provided in the Declaration, Bylaws or Georgia law.
- (ii) **Tenant Screening.** Any Owner who is seeking to lease his or her Lot must engage a professional third-party service or services ("Tenant Screening Service" or "Service") prior to entering into a lease agreement. Prior to such occupancy, the Owner must complete and provide the Association confirmation of the Tenant Screening.

If the Tenant Screening report does not include a review of the Georgia Sexual Offender Registry, the Owner will separately verify this information and confirm such verification with the screening report provided to the Board. **The Owner is not required to provide the Board with the results of the Tenant Screening,** but the Owner must provide the Board with a receipt or other documentation evidencing that the Owner has performed the Tenant Screening required hereunder, which must include the name, address and telephone number of the Tenant Screening Service and the information identified above concerning the prospective tenant(s).

The Board will not evaluate the information or make any determination or recommendation as to the suitability of any prospective tenant. The selection of a suitable and appropriate tenant shall be the sole responsibility of the Lot Owner.

- (iii) **Compliance.** Each Owner and Occupant shall comply with the Declaration, Bylaws, Association rules and regulations, and all applicable laws and ordinances. Owners and Occupants shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure such compliance and indemnify and hold the Association harmless for their and their Occupants' and guests' failure to comply. The Owner shall cause all Occupants and guests of his or her Lot to comply with the Declaration, Bylaws and Association rules, and shall be responsible for all violations by such Occupants and guests, notwithstanding the fact that such Occupants and guests also are fully liable and may be sanctioned for any such violation.

Any of the following shall constitute a default under the lease and authorizes the Association to declare the lease in default and to terminate the lease for any such violation and/or to compel the Owner to evict the Lot Occupant(s): (A) any violation of any provision of the Declaration, Bylaws, Association rules or applicable law or ordinance by an Owner, Occupant, or any guest of an Owner or Occupant; (B) any felony arrest of or felony criminal charge against an Occupant; (C) any Amber alert issued on a vehicle registered or parked at the Community by an Occupant or guest of such Occupant; or (D) any conduct by an Occupant or guest of an Occupant that creates a reasonable risk to life and/or safety at the Community. The Association may bring an action against the Owner and/or Occupant(s) for damages and/or injunctive relief, or may impose fines and/or other sanctions under the Declaration, Bylaws or Georgia law, and/or may terminate Grandfathered status, Leasing Permits, Hardship Leasing Permits and/or leases, for any such violations.

Failure by the Association to enforce any of its rights shall not be deemed a waiver of the right to do so thereafter. Any costs associated with any enforcement action by the Association under this Section, including all reasonable attorneys' fees and/or collection fees or costs actually or contingently incurred, and court costs, shall be specially assessed against Owner's Lot and shall be a personal obligation of the Owner, being deemed as an expense which benefits the leased Lot and Owner. If any Occupant, or any guest, invitee, licensee or family member of the Occupant violates the Declaration, Bylaws or rules and regulations, for which a fine is imposed, such fine may be assessed against the Occupant and/or Owner, as provided in the Declaration and Bylaws.

When a Lot 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 30 days after it is due and payable, then, upon request by the Board, the lessee shall pay the Association all unpaid annual and special assessments and other charges owed and payable by the Owner during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount,

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

7.4 Signs. No sign of any kind shall be erected or displayed within the Community without the prior written consent of: (a) the Declarants or, after the termination of the rights of Declarants hereunder, the Board of Directors; and (b) the Architectural Review Committee, if any. Notwithstanding the foregoing, the Board and the Declarants shall have the right to erect reasonable and appropriate signs. For-sale signs and security signs not larger than 18-inches by 18-inches and any signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Mortgagee in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure. The Board may impose a fine of One-Hundred and Fifty and No/100 Dollars (\$150.00) for display of any sign in violation of this provision which is not removed within twenty-four hours after written demand is delivered to the Owner at that Lot.

7.5 Vehicles; Parking. Vehicles shall be parked only in appropriate parking spaces serving the Lot or other designated areas, if any. No on-street parking, other than in connection with special events as approved by the Board of Directors, shall be permitted within the Community. All parking shall be subject to such rules and regulations as the Board may adopt. Declarants may, but shall not be obligated to, create additional guest parking areas on Common Property and show the same on the recorded plats for the Community or identify the same as such on the parking spaces themselves ("Guest Parking Areas"). No Owner or any member of the Owner's family residing with the Owner or tenants residing on the Lot shall park any vehicle in any Guest Parking Area. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking areas" shall refer to the number of garage parking spaces and the spaces located in the driveway of each Lot. All homes shall contain a garage; carports shall not be permitted. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five days if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle may be removed from the Community by the Board of Directors. Any towed vehicle, boat, personal watercraft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go-cart, golf cart, commercial truck, camper, bus or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage, for periods longer than 24 hours may be removed from the Community by the Board of Directors. Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. No eighteen wheel trucks or the cabs of such trucks or trucks with a load capacity in excess of three-quarters of a ton shall be parked, kept or stored within the Community except during the time reasonably necessary to provide service or delivery within the Community.

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

If a vehicle is parked in a fire lane, is blocking another vehicle, is obstructing the flow of traffic, is parked on any grassy area, is parked in any alley, or otherwise creates a hazardous conditions, no notice shall be required and the Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any office or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

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

7.7 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on the exterior of any Lot, with the exception of dogs, cats or other usual and common household pets. All pets shall be registered, licensed and inoculated if and as required by law. No pets shall be kept, bred or maintained for any commercial purpose. No exterior pens for household pets shall be erected or maintained on any Lot unless approved in accordance with the provisions of Article 6 hereof. Dogs shall at all times when outside the Lot be kept on a leash or otherwise under control at all times. Animal control authorities shall be permitted to enter the Community to patrol and remove unlicensed pets. An Owner shall not allow any animal waste to remain on the Common Property maintained by the Association. The Association may require the removal of any animal that presents an actual threat to the health or safety of residents and require abatement of any nuisance or unreasonable source of annoyance.

7.8 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Lot. No Lot shall be used for the storage of anything 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. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. 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. Any noise that can be heard inside a neighboring house with the windows and doors closed will be considered too loud and in violation of this provision. This provision shall not apply to any Lot(s) owned by the Declarants. Notwithstanding the above, the Association shall have no obligation to enforce the provisions of this Section, or any other provision of the Declaration or Association regulations, to address nuisances or disturbances affecting or between Lot Owners or Occupants, such action being within the sole discretion of the Board of Directors. Rather, the intention of this provision is to grant aggrieved Owners and Occupants a private right of redress for actions, activities or conduct of other Owners or Occupants which unreasonably disturb or impair the

peaceful enjoyment of the Community. No claim for any loss, damage or otherwise shall exist by an aggrieved Owner or Occupant against the Association, its officers, directors or agents, for any failure to enforce or election to not enforce the provisions of this Section of any other provision of the Declaration or Association regulations prohibiting nuisances or disturbing conduct by individuals and/or pets at the Community.

7.9 Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, 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.

7.10 Antennas. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Lot, unless approved in accordance with the provisions of Article 6 hereof; provided, however, no such approval shall be necessary to install (1) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services, that are one meter or less in diameter; (2) antennas designed to receive video programming services via multi-point distribution services that are one meter or less in diameter or diagonal measurement; or (3) antennas that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the dwelling unless an acceptable quality signal cannot otherwise be obtained.

7.11 Tree Removal. No trees that are more than four (4) inches in diameter at a point twelve (12) inches above the ground and no ornamental or flowering trees, including, but not limited to, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter, shall be removed from a Lot without prior written approval pursuant to Article 6 hereof. Owners shall also comply with any local ordinance and zoning condition applicable to tree removal. In the event of a conflict between the provisions of this Section and any local ordinance or zoning condition, the more restrictive provision shall govern. This provision shall not apply to the removal of trees by the Declarants, or the Association in connection with construction approved under Article 6 hereof.

7.12 Drainage. Catch basins, retention ponds, detention ponds, drainage swales and drainage easement areas are for the purpose of controlling the natural flow of water only. Owners shall not obstruct or alter the drainage flow across or from their Lot after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article 6 hereof.

7.13 Sight Distance at Intersections. All property located at street at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or other planting or thing shall be placed or permitted to remain where, in the opinion of the Board, it would create an unsafe condition.

7.14 Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, air conditioning units, heat pumps, swimming pool pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Declarants, however, hereby expressly reserve 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 the Declarants. The Association may, but shall not be required to, contract with a private trash collection company to pick up all usual and customary household trash on a regular basis. Trash and recycling receptacles shall be placed at the curb no earlier than 5:00 p.m. the day before pick up and shall be removed within twenty-four (24) hours. Trash pickup shall also be subject to such reasonable rules and regulations as the Board of Directors may adopt.

7.15 Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval in accordance with the provisions of Article 6 hereof. Declarants, however, hereby expressly reserve the right to subdivide and/or revise and re-record the subdivision plat of any Lot(s) with the consent of the Owner of the affected Lot(s) and to approve the revision and re-recording of any plat of any Lot(s) owned by any builder or developer, including, but not limited to, changing any Lot to Common Property or creating a public or private street over any Lot or property that was formerly a Lot, without the consent of any Person, other than the Owner(s) of such property.

7.16 Firearms. The use or discharge of firearms in the Community is prohibited. The term “firearms” includes, without limitation, “B-B” guns, pellet guns and other guns of any type, regardless of size.

7.17 Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any part of the Common Property except as may be installed by the Association or upon any Lot without prior written approval in accordance with the provisions of Article 6 hereof. Guidelines detailing acceptable fence styles or specifications may be issued pursuant to Article 6, but in no event may a chain link or barbed wire fence be approved; provided, however, the Declarants and the Association may erect any type of fence on the Common Property or elsewhere within the Community as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for health and safety of Owners and Occupants. In the event that the Owner obtains approval to construct a fence in accordance with this Section, the Association shall no longer be obligated to maintain landscaping on enclosed portions of the Lot and such landscaping shall be the sole responsibility of the Owner.

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

7.19 Air-Conditioning Units. No window air-conditioning units may be installed.

7.20 Lighting. Exterior lighting on any Lot visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Lot; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; (e) front house illumination of model homes; or (f) other lighting approved under and pursuant to Article 6 hereof.

7.21 Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any Lot. Exterior sculpture, fountains, flags or similar items must be approved under and pursuant to Article 6 hereof.

7.22 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Declarants, in accordance with the provisions of Article 6 hereof.

7.23 Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Lot without prior written approval in accordance with the provisions of Article 6 hereof and in no event shall any above-ground swimming pool be permitted.

7.24 Gardens, Play Equipment and Pools. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals) or garden pool shall be erected on any

Townhome Unit or the front yard of other Lots without the prior written approval in accordance with the provisions of Article 6 hereof.

7.25 Mailboxes. All mailboxes serving Lots shall be approved in accordance with the provisions of Article 6 hereof. Identical replacement mailboxes may be installed without further approval; but no modification to or change in mailboxes may be made unless approved in accordance with the provisions of Article 6 hereof.

7.26 Clotheslines. No exterior clotheslines of any type shall be permitted upon any Lot.

7.27 Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarants on any Lot, or any part of any easement area associated therewith without prior approval in accordance with the provisions of Article 6 hereof.

7.28 Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades, or any other purpose.

7.29 Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn or other structure may be used as a residence, either temporarily or permanently, without written approval in accordance with the provisions of Article 6 hereof. However, this Section shall not be construed to prevent Declarants and those engaged in development, construction, marketing, property management or sales in the Community from using sheds, trailers or other temporary structures for any of the foregoing purposes. In addition, nothing in this Declaration shall be construed to prevent Declarants or any builder from developing, constructing, marketing, or maintaining model homes or speculative housing within the Community.

7.30 Stream Buffer. Land-disturbing activities shall not be conducted within twenty-five (25) feet of the banks of any stream within the Community, as measured from the point where vegetation has been wrested by normal stream flow, except with prior written approval under Article 6 hereof and compliance with Georgia law, including without limitation, the Control of Erosion and Sedimentation Act, O.C.G.A. Section 12-7-1, *et seq.*, as amended from time to time.

Article 8

Townhome Neighborhood

8.1 General. The provisions set forth in this Article shall be applicable only to the Townhome Units and shall be in addition to the covenants, conditions, restrictions and casements set forth in this Declaration. As long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to modify the provisions of this Article or impose additional covenants and restrictions.

8.2 Party Walls. Each wall or fence whether built as part of the original construction of the Townhome Units or added pursuant to Article 6 hereof which shall serve and separate any two (2) adjoining Townhome Units shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall or fence may restore it, and the other Owner who is benefited by the wall or fence shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

8.3 Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to Townhome Units, increased common expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within all Townhome Units shall be maintained with heating operating and at a minimum of fifty (50°) degrees Fahrenheit during the months of October, November, December, January, February, March, and April. Owners shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working, the Owner shall immediately inform the Owners of the other Townhome Units of this failure of the equipment and of the time needed in order to repair the equipment and shall take reasonable steps to keep the Townhome Unit heated sufficiently to prevent the breakage of water pipes.

8.4 Easements.

- (a) Easement for Encroachment and Overhang. There is here by reserved to the Declarants for the benefit of each Townhome Unit a reciprocal appurtenant easement for encroachment and overhang between adjacent Townhome Units and between a Townhome Unit and adjacent Common Property due to the original construction or the unintentional placement or settling or shifting of the improvements including, but not limited to, retaining walls, downspouts and gutters, constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than two (2) feet, as measured from any point on such common boundary; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association, other than the Declarants in the original construction of the Units.
- (b) Townhome Unit Owner - Easement for Utilities. Declarants hereby establish for the benefit of each Townhome Unit a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving such Townhome Unit and situated in, on or under any other Townhome Unit or the Common Property. In the event that any Owner desires access to another Townhome Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owner of such other Townhome Unit(s) at least two (2) days in advance of the date that access is needed and attempt to agree on a convenient date and time for access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a Townhome Unit to which access is needed under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Townhome Units, reasonable steps shall be taken to protect such Townhome Units and the property of the Owners and Occupants thereof, and damage shall be repaired by the Person causing the damage at its sole expense

Article 9
Insurance and Casualty Losses

9.1 Insurance on Common Property. The Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association ("Fannie Mae"), the U.S. Department of Veterans Affairs ("VA"), and the U.S. Department of Housing and Urban Development ("HUD"), as applicable to the Community. Accordingly, the Board of Directors shall obtain casualty insurance for all insurable improvements, whether or not located on the Common Property, which the Association is obligated to maintain. This insurance shall provide, at a

minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, 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. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition to the other insurance required by this Section, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the policy is in force, or any lesser amount of fidelity coverage allowable under the applicable Fannie Mac guidelines. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

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

9.3 Damage and Destruction – Lots not Insured by Association. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Section 12.1 of this Declaration.

Article 10

Mortgage Provisions

10.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to

timely written notice of: (a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

10.2 Audit. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs of the audit, such holder shall be entitled to receive a copy of audited financial statements of the Association within ninety (90) days of the date of the request.

10.3 No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgage or any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Article 11 **Easements**

11.1 General. Each Lot shall be subject to those easements, if any, shown or set forth on the recorded subdivision plats for the Community, as amended from time to time, as well as the easements now or hereafter established by the Declarants in this Declaration or by any other document recorded in the Office of the Clerk of Superior Court for Cobb County, Georgia.

11.2 Easements for Use and Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the Occupants of the Owner's Lots in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

(a) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least two-thirds (2/3) of the Lots (other than Declarants) and the consent of Declarants, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarants or any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Community (Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarants or any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Community.);

(b) the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Property to government entities, any quasi-governmental agency or to any utility company or cable television company;

(c) the right of the Association to dedicate or transfer all or any portion of the Common Property

upon the Common Property upon the approval of the Owners of at least two-thirds (2/3) of the Lots (other than Declarants) and the Declarants;

(d) all other rights of the Association, the Declarants, Owners and Occupants set forth in this Declaration, in any Supplementary Declaration or in any deed conveying Common Property to the Association; and

(e) all encumbrances and other matters shown by the public records affecting title to the Common Property.

11.3 Easements for Utilities.

(a) There is hereby reserved to the Declarants and granted to the Association a blanket easement upon, across, above and under all property within the Community for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarants or the Association might decide to have installed to serve the Community. Declarants, the Association or the designee of either, as the case may be, may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarants or the Board shall have the right to grant such easement.

(b) Declarants hereby establish for the benefit of each Lot a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving such Lot and situated in, on or under the private streets or other Common Property or other Lots.

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

11.5 Easement for Maintenance - Association. Declarants hereby grant to the Association a perpetual easement across the exterior portions of all Lots and Townhome Units as may be reasonably necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Lots and Townhome Units, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole expense.

11.6 Easement for Maintenance - Owners. Declarants hereby reserves for the benefit of each Lot reciprocal appurtenant easements between adjacent Lots for the purpose of maintaining or repairing the improvements located on each Lot which easement shall extend to a distance of three (3) feet as measured from any point on the common boundary between the Lot. The easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the improvements located on the Lot over which this easement is exercised which arises out of such maintenance or repair work.

11.7 Easement for Signage, Lighting, Landscaping and Similar Items. There is hereby reserved to Declarants for so long as they retain their rights as Declarants, a nonexclusive easement over all Lots and Common Property for a distance of ten (10) feet behind any Lot line which parallels a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features and/or "theme areas," lighting, stone, wood, or masonry wall features and/or related landscaping.

11.8 Easement for Private Streets, Alleys, Sidewalks, Signs and Perimeter Fencing. Declarants hereby grant, convey, declare, create, impose and establish a perpetual, non-exclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across the private streets and alleys located within the Community. At such time as one or more subdivision plats for the property submitted to this Declaration are recorded in the real estate records of the Office of the Clerk of Superior Court of Cobb County, Georgia, any reference to private streets and alleys shall then and thereafter mean a reference to the private streets and alleys as actually constructed and depicted on the recorded subdivision plat. The right-of-way easement herein granted shall permit joint usage of such easement by (a) the Owners and Occupants, (b) the legal representatives, successors and assigns of the Owners, and (c) invitees and licensees of the Owners and Occupants. Declarants hereby expressly reserve for themselves, their successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any right-of-way easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional non-exclusive easements to third parties, over, under and across the easement area. Declarants hereby reserve for the benefit of Declarants and grant to the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across those utility easement areas and private streets and roads for the installation, maintenance, and use of such streets and roads, sidewalks, traffic directional signs, grading for proper drainage of said streets and roads, and related activities and improvements. Declarant hereby reserves and grants to the Association, the perpetual nonexclusive right and easement upon, over and across those strips of land ten (10) feet in width located along those boundaries of all Lots that constitute part of the perimeter boundary of the Community, such easement to be for the purpose of constructing, installing, replacing repairing and maintaining a perimeter wall or fence around the perimeter boundary of the Community, provided that neither Declarants nor the Association shall have any obligation to construct any such perimeter wall or fence.

11.9 Easement for Entry Features and Streetscapes. There is hereby reserved to the Declarants and granted to the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon any portion of a Lot containing entry features or streetscapes as constructed by Declarants. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around entry features and streetscapes and the right to grade the land under and around the same.

11.10 Easement for Guest Parking Areas. Declarants hereby grant, convey, declare, create, impose and establish an easement in perpetuity upon, over and across the Guest Parking Areas (as they may exist from time to time) within the Community for temporary parking by guests, invitees and licensees of the Owners and Occupants. Owners and Occupants shall not be entitled to park vehicles owned or used on a regular basis by said Owners or Occupants on the Guest Parking Areas. All parking in Guest Parking Areas shall be

subject to the provisions of Section 7.5 hereof and such additional rules and regulations as the Board of Directors may adopt.

11.11 Easement for Drainage. There is hereby reserved to the Declarants and granted to the Association a blanket easement across all Lots for creating and maintaining satisfactory storm water drainage in the Community; provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the dwelling structure. 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. This easement expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the land, or to take any other similar action reasonably necessary, following which Declarants or Association, as applicable, shall restore the affected property to its original condition as near as practicable. It is anticipated that increased storm water runoff across downstream Lots will result from the construction of impervious surface within or adjacent to the Community. Neither the Declarants, the Association or any builder or Owner constructing according to plans and specifications approved under Article 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.

11.12 Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, architectural guidelines, and amendments thereto, Declarants reserve an easement across the Community for Declarants to maintain and carry on, upon such portion of the Community as Declarants may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarants may be required or convenient for Declarants' development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or nearby property being developed by Declarants including, but not limited to: the right to place or authorize the placement of marketing and directional signs on Lots or right-of-way at street intersections within the Community; 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; the right to tie into any portion of the Community with streets, driveways, paths, parking areas and walkways; 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, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; 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; the right to convert Lots (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarants may use residences, offices or other buildings owned or leased by Declarants as model residences and sales offices and may also use Community recreational facilities as a sales office without charge. This Section shall not be amended without the Declarants' written consent until the Declarants' rights hereunder have terminated as herein provided.

11.13 Easements for Driveway Encroachment. There is hereby reserved appurtenant easements for encroachment as between each Lot and such portion or portions of the driveway serving an adjacent Lot due to the placement or settling or shifting of the driveway constructed, reconstructed, or altered thereon (as approved under Article 6 of the Declaration) to a distance of not more than two (2) feet, as measured from any point on the common boundary between adjacent Lots along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner or Occupant after the initial construction of improvements by Declarants.

Article 12

General Provisions

12.1 **Enforcement.** Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plats for the Community and in the deed to such Owner's Lot, if any. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association, the Declarants or an aggrieved Owner. Failure by the Declarants, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or design guidelines and to assess the cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing. The Association also shall have all enforcement powers authorized under the Act and/or otherwise not expressly prohibited by Georgia law.

12.2 **Occupants Bound.** All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants and the guests and invitees of Owners and Occupants. The Owner shall be responsible for insuring that the Occupants, the guests, invitees and licensees of the Owner and Occupant strictly comply with all provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design guidelines. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.

12.3 **Self-Help.** In addition to any other remedies provided for herein, the Association, the Declarants, the ARC or their respective duly authorized agents shall have the power to enter upon any Lot or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Owner shall be given ten (10) days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required herein or by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.

12.4 **Duration.** The covenants and conditions of this Declaration shall run with and bind the Community perpetually to the extent provided in the Act.

12.5 **Termination of Rights of Declarants.** The rights of any Declarant to take, approve or consent to actions under this Declaration, the Articles of incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the applicable Declarant no longer owns any property in the Community and a certificate of occupancy has been issued for a dwelling on each Lot in the Community; or (b) the date of recording by a Declarant in the real estate records of the Office of the Clerk of Superior Court of Cobb County, Georgia of a written instrument terminating all of such Declarant's rights hereunder.

12.6 **Amendment.** This Declaration may be amended unilaterally at any time and from time to time by Declarants (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, without limitation, the Federal National Mortgage Association or the 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 private insurance company, including, without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner of such Lot consents thereto in writing. Further, Declarants may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder nor shall it adversely affect title to any Lot without the consent of the affected Owner. The Board of Directors, with the written consent of the Declarants, and without a vote of the members may amend this Declaration for the sole purpose of electing to be governed by the provisions of the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* In addition to the above, this Declaration may be amended upon the affirmative vote or written consent of the Owners holding at least two-thirds of the total eligible Association vote. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarants to any amendment shall be evidenced by the execution of said amendment by Declarants. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given.

12.7 Challenges to Amendment. Any action to challenge the validity of an amendment adopted as provided herein must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

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

12.9 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 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.

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

12.11 No Merger. There shall be no merger of any of the covenants, conditions, restrictions or easements created or reserved hereby with the free estate of a Declarant, by reason of the fact that such Declarant may own or hold the estate or interest both encumbered and benefited by such covenants, conditions, restrictions or easements and no such merger shall occur unless and until a Declarant, while owning all of the estate or interests shall execute a written statement or instrument affecting such merger and shall duly record the same.

12.12 Preparer. This Declaration was prepared by David N. Dorough, Jr., Dorough & Dorough, LLC, Attorney at Law, Two Decatur Town Center, Suite 520, 125 Clairemont Avenue, Decatur, Georgia 30030-2551.

12.13 Notices. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Lot and to the Declarants, or the Association at the address of their respective registered agent on file with the Secretary of State of the State of Georgia. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by private courier service. The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or the date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

12.14 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth I, Queen of England.

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

12.16 Agreements.

(a) Subject to the prior approval of Declarants, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

(b) Declarants intend to assign their rights and delegate their duties and obligations to *the* Association in and to any and all agreements required by governmental authorities, or deemed necessary or appropriate by Declarants, in connection with the development of all or any portion of the real property submitted, or to be submitted, to the Declaration from time to time, including without limitation, utility easements, access easements, indemnification agreements, flood plain development agreements, detention pond maintenance agreements, lake maintenance agreements, and dam maintenance agreements. Upon such assignment, the Association shall assume and agree to perform all of the duties and obligations of Declarants thereunder; and the Association shall hold Declarants harmless from and against any liability

arising under such instruments from and after the effective date of such assignment. Unless Declarants have assigned its rights and delegated its duties and obligations to the Association under any such agreement within three (3) years following the execution of such agreement, the assignment, delegation and assumption shall be automatically deemed to have occurred on the third anniversary thereof.

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

12.18 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote and the consent of the Declarants. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided herein, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made unilaterally by the Declarants as provided herein or is approved by the percentage votes necessary to institute proceedings as provided above.

Article 13
Georgia Property Owners' Association Act

13.3 Conflicts. From and after the date this Article 13 shall become effective pursuant to the provisions of Section 13.1 of this Declaration, in the event of any conflicts between the Act, or any of the provisions of this Declaration, the Articles of Incorporation of the Association, or the Bylaws of the Association, the provisions of the Act shall govern and control.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Declarants herein hereby execute this instrument under seal, this
____ day of _____, 2018.

DECLARANT: **DUBOSE-PACES FERRY, LTD.**, a
 Georgia corporation

By: _____

Signed, sealed, and delivered
in the presence of:

WITNESS

NOTARY PUBLIC

My Commission Expires:

[AFFIX NOTARY SEAL]

[SIGNATURES ON FOLLOWING PAGE]

DECLARANT:

DREADNOUGHT DEVELOPMENT, LLC
a Georgia limited liability company

By: _____

By: _____

Signed, sealed, and delivered
in the presence of:

WITNESS

NOTARY PUBLIC

My Commission Expires:

[AFFIX NOTARY SEAL]

EXHIBIT "A"

Property Description

All that tract or parcel of land lying and being in Land Lots 694 and 695 of the 17th District, 2nd Section, Cobb County, Georgia, containing 10.78 acres, as more particularly shown on that certain Final Plat of **Kensington Green Subdivision**, prepared by Barton Surveying, Inc., containing the seal of David Barton, G.R.L.S. No. 2533, recorded in Plat Book 216, page 31, Cobb County, Georgia land records, reference to said plat of survey and the record thereof being hereby made for a more complete description.

EXHIBIT “B”

Lease Terms Exhibit - Addendum to Lease at Kensington Green
[This Addendum is required with all leases of Lots at Kensington Green and must be completed and provided to the Association prior to any occupancy of a Lot by the Tenant hereunder]

This Addendum is made and entered into this ___ day of _____, 20___ by and between the undersigned parties, and this Addendum hereby amends that Lease Agreement between the undersigned Landlord and Tenant dated _____, 20___, for the lease of Landlord's property ("Lot") at Kensington Green, by adding the following provisions thereto:

1. **ASSOCIATION IS THIRD-PARTY BENEFICIARY; CONFLICTS.** Tenant and Landlord acknowledge and agree that Kensington Green Homeowners Association, Inc. ("Association"), is a third-party beneficiary of the promises made in this Addendum to the Lease Agreement, and that the Association may enforce any of the provisions of this Addendum against Landlord and Tenant. Landlord and Tenant also acknowledge and agree that Landlord and Tenant have been provided copies of, have read, are fully aware of, fully understand, and will strictly comply with all provisions of this Addendum, and with the Declaration of Covenants, Conditions, Restrictions and Easements for Kensington Green, as amended ("Declaration") the Association's Bylaws and rules and regulations, as may be amended. If there are any conflicts between the provisions of the Lease Agreement and this Addendum, then the provisions of this Addendum shall control. Except as expressly amended hereby, the Lease Agreement shall continue in full force and effect.
2. **COMPLIANCE AND ENFORCEMENT BY ASSOCIATION.** Tenant shall control the conduct of his or her family and guests to assure compliance with the Association's legal documents and shall indemnify and hold Landlord and the Association harmless for any such person's failure to comply. Landlord and Tenant agree that the violation by Tenant, or any occupant or person living with Tenant, of any provision of this Addendum, the Declaration, Bylaws, Association rules, or any applicable law or ordinance, shall constitute a default under this Lease, and that the Association is hereby granted the authority and power to declare the Lease in default and terminated for any such violation. The Association may bring an action against the Landlord and/or Tenant for damages and/or injunctive relief, or may impose fines and/or other sanctions under the Declaration, Bylaws or Georgia law, including all remedies available to a landlord upon breach or default of a lease (including eviction of Tenant), for violations of the Declaration, Bylaws, Association rules, any applicable law or ordinance, or the Lease. Failure by the Association to enforce any of its rights shall not be deemed a waiver of the right to do so thereafter. Landlord delegates and assigns to the Association, at the Board's discretion, the power to evict Tenant on behalf of and for the benefit of Landlord. If the Association proceeds to evict Tenant, any costs associated therewith, including attorneys' fees and court costs, shall be specially assessed against Landlord's Lot and shall be a personal obligation of Landlord, being deemed as an expense which benefits the leased Lot and Landlord. If Tenant, or any guest, invitee, licensee or family member of Tenant violates the Declaration, Bylaws, Association rules, or any applicable law or ordinance, for which a fine is imposed, such fine may be assessed against Tenant and/or Landlord, as provided in the Declaration and Bylaws.
3. **PAYMENT OF ASSESSMENTS.** Upon request by the Association, Tenant shall pay to the Association all unpaid annual and special assessments which come due or are due during the term of the Lease and any other period of occupancy by Tenant. However, Tenant need not make such payments to the Association in excess of, or before the due dates for, Tenant's normal monthly rental payments to Landlord under the Lease. All such payments made under this Article shall reduce, by the same amount, Tenant's obligation to make monthly rental payments to Landlord. If Tenant fails to comply with such request, Tenant shall pay the Association all late or delinquent charges, interest, costs of collection and reasonable attorneys' fees actually incurred, to the same extent Tenant would be required to make such payments to the Association if Tenant were the owner of the Lot during the term of this Lease and any other period of occupancy by Tenant.
4. **MAINTENANCE AND INDEMNIFICATION.** Tenant shall promptly advise the Landlord of any condition of the Lot which requires repair or maintenance by Landlord, and Tenant shall promptly advise the Association of any condition of the Common Area affecting the Lot which requires repair or maintenance by the Association. Tenant shall be liable for and shall indemnify, release and hold Landlord and the Association harmless from any damage or injury to the person or property of Tenant or any other person if such damage or injury is due, in whole or in part, to: (1) the act or negligence of the Tenant, Tenant's guests, family, licensees or invitees, or (2) any failure of Tenant to report in writing to Landlord and the Association any defective condition which Landlord or the Association would be required to repair under the terms of the Declaration and this Lease.
5. **USE OF ASSOCIATION COMMON PROPERTY; USE OF LOGO AND GOODWILL.** Landlord transfers and assigns to Tenant for the term of this Lease all privileges that Landlord has to use any Association amenities. Landlord and Tenant agree that delinquency by Landlord in the payment of assessments or other charges to the Association authorizes the Association to suspend Common Property use privileges. Landlord and Tenant agree that the Association may notify the Tenant of any such suspension of privileges caused by the Landlord's delinquency. Tenant will not, in any social media or otherwise, use the Kensington Green logo, or any Kensington Green image or representation, or otherwise identify the Kensington Green community in any manner that creates any life or safety risk or that adversely impacts the reputation, image or goodwill of the community or the Association.
6. **SECURITY.** Landlord and Tenant acknowledge and agree that the Association may, but shall not be required to, periodically provide measures or take actions which improve safety at the Kensington Green community. However, Landlord and Tenant, for themselves and their guests, licensees and invitees, acknowledge and agree that the Association is not a provider of security and shall have no duty to provide security on or at the community. Landlord and Tenant shall be responsible to protect their person and property and to provide such security as they deem appropriate. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken.

IN WITNESS WHEREOF, the parties have executed this Addendum the day and year first above written.

TENANT: _____
(Signature)

LANDLORD: _____
(Signature)

TENANT: _____
(Signature)

Name: _____
(Please Print)

Name(s): _____
(Please Print)