

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
THE BERKELEY COMMONS HOMEOWNERS ASSOCIATION, INC.**

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AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
THE BERKELEY COMMONS HOME OWNERS ASSOCIATION, INC.

ARTICLE I
NAME & DEFINITIONS

SECTION 1.0 NAME.

The name of the property is Berkeley Commons Subdivision (hereinafter sometimes called “The Fairways and The Lake at Berkeley Hills”), which is a residential property owners’ development which hereby submits to the Georgia Property Owners’ Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended.

SECTION 1.01 DEFINITIONS.

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

- ◆ **Act** means the Georgia Property Owners’ Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended.
- ◆ **Architectural Control Committee** or **ACC** means the committee established to exercise the architectural review powers set forth in Section 9 hereof.
- ◆ **Area of Common Responsibility** means the Common Property, together with any areas, which become the Association’s responsibility under this Declaration or by contract or agreement with any other Person.
- ◆ **Articles or Articles of Incorporation** mean the Articles of Incorporation of Berkeley Commons Homeowners Association, Inc., filed with the Secretary of State of the State of Georgia
- ◆ **Association** means Berkeley Commons Homeowners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.
- ◆ **Association Legal Instruments** means this Declaration and all exhibits hereto, including the Association’s Bylaws, and the plats, all as may be supplemented or amended.
- ◆ **Board or Board of Directors** means the elected body responsible for management and operation of the Association.
- ◆ **Bylaws** mean the Bylaws of Berkeley Commons Homeowners Association, Inc. attached to this Declaration as Exhibit “C” and incorporated herein by this reference.
- ◆ **Common Property** means any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.
- ◆ **Common Expenses** mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Lots.
- ◆ **Community-Wide Standard** means the standard of conduct, maintenance, or other activity generally prevailing in the Property. The Board and the ACC may more specifically determine such standard.

- ◆ **Effective Date** means the date that this Declaration is recorded in the Gwinnett County, Georgia land records.
- ◆ **Eligible Mortgage Holder** means a holder of a first mortgage secured by a Lot who has requested notice of certain items under Section 15© hereof.
- ◆ **Lot** means a portion of the Property intended for ownership and use as a single-family dwelling site as permitted in this Declaration and as shown on the plats for the Property, or amendments or supplements thereto, recorded in the Gwinnett County, Georgia land records.
- ◆ **Majority** means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.
- ◆ **Mortgage** means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.
- ◆ **Mortgagee or Mortgage Holder** means the holder of any Mortgage.
- ◆ **Occupant** means any Person occupying all or any portion of a dwelling or other property located within the Property for any period of time, regardless of whether such Person is a tenant or the Owner of such property.
- ◆ **Officer** means an individual who is elected by the Board to serve as President, First Vice President, Second Vice President, Secretary, or Treasurer, or such other subordinate officers as the Board may determine necessary.
- ◆ **Owner** means the record titleholder of a Lot, but shall not include a Mortgage Holder.
- ◆ **Person** means any individual, corporation, firm, association, partnership, trust, or other legal entity.
- ◆ **Property** means that real estate, which is submitted, to the Act and the provisions of this Declaration, as described in Exhibits "A", and "B" attached hereto and incorporated herein by reference. The Property is a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

SECTION 2.0 LOCATION, PROPERTY DESCRIPTION, AND PLATS.

The Property subject to this Declaration and the Act is located in Land Lots 228 of the 6th District of Gwinnett County, Georgia, being designated as The Fairways, Unit 1, and The Lake at Berkeley Hills, Unit One, and more particularly described on the attached Exhibit "A" and "B" attached to this declaration, which exhibit is specifically incorporated herein by this reference. Plats of survey relating to the Property has been filed in the Gwinnett County, Georgia records as follows:

<u>Recording Date</u>	<u>Plat Book/Page</u>
03/10/1992	56/32
4/10/1992	55/261
5/19/1992	55/295
12/15/1992	8361/36
12/15/1992	8361/48
12/15/1992	8470/77
12/15/1992	10827/291
1/11/1993	58/38
1/11/1993	61/12
1/11/1993	61/78
1/14/1993	61/86
02/02/1993	8361/ 86
9/14/1993	61/37
5/24/1994	62/190
9/6/1994	64/19
10/5/1994	10827/291
4/9/2008	48769/0632

The plat of survey is incorporated herein by reference as fully as if the same were set forth in their entirety herein.

ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

SECTION 3.0 Each Person who is the record owner of a fee or undivided fee interest in any Lot, and whose Lot is submitted to Membership in the Association by execution hereof or by a consent form (as set forth above) recorded in the Gwinnett County, Georgia land records, shall be a Member of the Association and shall be entitled to vote as set forth herein and in the Bylaws of the Association. This is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot owned. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast or more than one (1) office held for each Lot owned.

SECTION 3.01 Members shall be entitled to one (1) equal vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners determine among themselves and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

ARTICLE IV.

ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

SECTION 4.0 Except as provided below or elsewhere in the Act or the Association Legal Instruments, the amount of all Common Expenses shall be assessed against all the Lots equally.

SECTION 4.01 Notwithstanding the above, the Board of Directors shall have the power to levy specific special assessments pursuant to this Section and to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board to do so shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.

(A) Except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility hereunder, any Common Expenses benefiting less than all of the Lots or significantly disproportionately benefiting all Lots may be specially assessed equitably among all of the Lots which are benefited according to the benefit received.

(B) Any Common Expenses 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 or Lots may be specially assessed against such Lot(s), including attorney's fees incurred by the Association in enforcing the Declaration, Bylaws or Association rules.

For purposes of this subSection, nonuse shall constitute a benefit to less than all Lots or a significant disproportionate benefit among all Lots only when such nonuse results in an identifiable, calculable reduction in cost to the Association.

ARTICLE V

ASSOCIATION RIGHTS AND RESTRICTIONS.

SECTION 5.0 The Association, acting through its Board of Directors, shall have the right and authority, in addition to and not in limitation of all other rights it may have:

(A) to make and to enforce reasonable rules and regulations governing the use of the Property, including the Lots and the Common Property;

(B) to enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by imposing reasonable monetary fines, exercising self-help powers, suspending use and voting privileges, and suspending services paid for as a Common Expense, as provided herein and in Section 44-3-223 of the Act. These powers, however, shall not limit any other legal means of enforcing such documents or provisions by either the Association or, in an appropriate case, by an aggrieved Owner;

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

(D) to control, manage, operate, maintain, replace and, in the Board's discretion, alter or improve all portions of the Property for which the Association is assigned maintenance responsibility under this Declaration;

(E) to deal with the Common Property in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;

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

(G) to permanently or temporarily close access to any portion of the Common Property with, except in emergency situations, thirty (30) days prior notice to all Owners. The owners may re-open the closed Common Property by a majority vote of the total Association vote, cast at a duly called special or annual meeting; and

(H) to acquire, lease, hold, and dispose of tangible and intangible personal property and real property.

ARTICLE VI

ASSESSMENTS.

SECTION 6.0 Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots.

SECTION 6.01 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) special assessments, to be established and collected as hereinafter provided; and (iii) specific special assessments levied by the Board hereunder against any particular Lot, including, but not limited to, reasonable fines imposed hereunder and assessments levied under Section 4.2 B) hereunder.

SECTION 6.02 Creation of the Lien. All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person 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 Gwinnett County, Georgia records evidencing the lien created under the Act and this Declaration.

SECTION 6.03 No Exemption. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever, including, but not limited to, nonuse of the Common Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

The lien provided for herein shall have priority as provided in the Act.

SECTION 6.04 Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent and the Owner shall be in default.

If the annual assessment or any part thereof is not paid in full on May 1 or if any other charge is not paid within ten (10) days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent 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, and interest at the rate of ten (10%) percent per annum, or such higher rate as permitted by the Act, shall accrue from the due date.

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

If assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law, including reasonable attorney's fees actually incurred, and suspend the Owner's and Occupant's right to use the Common Property (provided, however, the Board may not deny ingress or egress to or from the Lot).

SECTION 6.05 Computation of Operating Budget and Assessment. Prior to the beginning of each fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Property during the coming year, and the Board shall establish the annual assessment for the coming year. The Board shall cause the notice of the assessment(s) to be delivered to each member at least thirty (30) days prior to the due date for such assessment. The budget and the assessment shall become effective if approved at a duly called Association annual meeting by a vote of a majority of the eligible members present in person or by proxy at the meeting; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to approve the budget could not be called at this meeting.

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

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

SECTION 6.06 Special Assessment In addition to the annual assessment provided for in Section 6.01 above and assessments authorized under Section 6.01 and 8.02 hereof, the Board may at any time levy a special assessment against all Owners, with notice thereof sent to all Owners. However, any special assessment levied hereunder must be approved by at least fifty-one (51%) percent of those Owners either voting by ballot or written consent under Article II, Section 8 of the Bylaws, or present or represented by proxy at a duly called special or annual meeting of the members, notice of which shall specify that purpose.

SECTION 6.07 Initiation Fee. A non-refundable initiation fee plus the full amount of the current year's annual assessments (including any late fees, interest or other charges) must be paid in order to become a member of the Association.

SECTION 6.08 Capital Budget and Contribution. The Board may prepare an annual or multi-year capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in Section 6.05 above.

SECTION 6.09 **Statement of Account.** Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against such Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars or such higher amount as may be authorized under the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein. The Association may require an additional fee not to exceed twenty-five (\$25.00) dollars if the Association provides a copy of the Declaration and Bylaws to any such Person in connection with a closing or otherwise upon request.

SECTION 6.10 **Surplus Funds and Common Profits.** Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the Board's option, either be distributed equally to the Owners or credited to the next assessment chargeable to the Owners, or added to the Association's reserve account.

ARTICLE VII

INSURANCE.

SECTION 7.0 **Hazard Insurance on Common Property.** The Association's Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property. This insurance shall include fire and extended coverage, including coverage for vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

SECTION 7.01 **Association Liability and Directors' and Officers' Liability Insurance.** The Board 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 in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one million (\$1,000,000.00) dollars.

SECTION 7.02 **Premiums and Deductible on Association Policies.** Premiums for all insurance obtained by the Association shall be a Common Expense of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

SECTION 7.03 **Policy Terms.** All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee, for the respective benefited parties, as further identified in subSection (B) below. The provisions hereinafter set forth shall govern such insurance:

- (A)) All policies shall be written with a company licensed to do business in Georgia.
- (B)) All policies on the Common Property shall be for the benefit of the Association and its members.
- (C)) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

SECTION 7.04 **Individual Lot Owner Insurance.** Each Owner shall carry blanket all-risk casualty insurance, if reasonably available, or if not reasonably available, fire and extended coverage, on his or her Lot and structures constructed thereon meeting the same requirements as set forth in subSections (a) and (c) of this Section for insurance on the Common Property. Each Owner further covenants and agrees that, in the event of damage and destruction of structures on his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Section 9 of this Declaration, unless a determination not to rebuild is made by the Lot Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard. The Owner shall pay any costs of repair or reconstruction, which are not covered by insurance proceeds.

SECTION 7.05 **Insurance Deductibles.** In the event of an insured loss under the Association's casualty policy, any required deductible shall be considered a maintenance expense to be paid by the Person or Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Lot or a Lot and the Common Property, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total cost of repair, or otherwise as the Board reasonably determines equitable, unless the insurance policy provides that the deductible will apply to each Lot separately. If any Owner fails to pay the deductible when required hereunder, then the Association can pay the deductible and assess the cost to the Owner or Owners pursuant to Section 4.01 and 6 hereof. In the event of an insured loss under the Association's casualty policy, any required deductible shall be considered a maintenance expense to be paid by the Association or the Person or Persons who would be responsible for such loss in the absence of insurance in the same proportion for which they otherwise would be responsible bears to the total damage incurred.

ARTICLE VIII

REPAIR AND RECONSTRUCTION.

SECTION 8.0 **Procedure** In the event of damage to or destruction of all or any part of the Property insured by the Association as a result of fire or other casualty, unless eighty (80%) percent of the Association members in good standing, including the Owner(s) of any damaged Lot(s), vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Lot Owner with respect to the distribution of proceeds to any such Lot.

SECTION 8.01 **Cost Estimates.** Immediately after a fire or other casualty causing damage to the Property, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds.

SECTION 8.02 **Source and Allocation of Proceeds.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Lot Owners without the necessity of a vote of the members or compliance with Section 6.06 above. If, after repair and reconstruction is completed, there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

SECTION 8.03 **Plans and Specifications.** Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Property was originally

constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board. To the extent insurance proceeds are available, the Association may reconstruct or repair owner improvements damaged as a result of fire or other casualty.

ARTICLE IX

ARCHITECTURAL CONTROLS.

SECTION 9.01 **Architectural Standards.** Except as provided herein, no Owner, Occupant, or any other person may make any encroachment onto the Common Property, or make any exterior change, alteration, or construction (including painting and landscaping), nor erect, place or post any object or other thing on the exterior of the buildings, in any windows (including the interior of windows which are visible from the exterior), or on any Common Property, without first obtaining the written approval of the Architectural Control Committee ("ACC"). The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing buildings, Lots and structures, and the location in relation to surrounding structures and topography.

SECTION 9.01 **Approval Procedure.** Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. The ACC or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and the Association, acting through the Board, shall be entitled to stop any construction which is not in conformance with approved plans.

The ACC or the Board, may allow such encroachments on the Common Property as it deems acceptable.

If the ACC or its designated representative fails to approve or to disapprove such application within thirty (30) days after the application and such information as the ACC may reasonably require shall have been submitted, its approval will not be required and this subSection will be deemed complied with, unless such structure or improvement otherwise is in violation of the Declaration, the Bylaws, the Design Standards, the Association's rules and regulations, or applicable zoning ordinances.

SECTION 9.02 **Architectural Control Committee.** The Architectural Control Committee shall constitute a standing committee of the Association. No member in good standing shall be barred from serving on the ACC. If there are no members volunteering to serve on the ACC, the ACC shall consist of the Board of Directors.

SECTION 9.03 **Condition of Approval.** As a condition of approval for a requested architectural change, modification, addition or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration. In the discretion of the Board or the ACC, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

SECTION 9.04 **Limitation of Liability.** Review and approval of any application pursuant to this Section may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board nor the ACC shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Association, the Board, the ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design or quality of approved construction on or modifications to any Lot, nor may any action be brought against the Association, the Board, the ACC, or any member thereof, for any such injury, damage or loss.

SECTION 9.05 **No Waiver of Future Approvals.** Each Owner acknowledges that the members of the Board and the ACC will change from time to time and that interpretation, application and

enforcement of the architectural standards may vary accordingly. The approval of either the Board or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the Board or the ACC, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

SECTION 9.06 **Enforcement.** Any construction, alteration or other work done in violation of this Section, the Declaration, the Bylaws, the design standards or any applicable zoning regulations shall be deemed to be nonconforming. Upon written request from the Board, a violating Owner shall, at his or her own cost and expense, remove such nonconforming construction, alteration or other work and restore the property to substantially the same condition as existed prior to such construction, alteration or work. Upon failure or refusal of such owner to perform the required restoration, the ACC, or its authorized agents may, after fourteen (14) days notice to said owner, enter upon the lot and perform such restoration as the ACC, in its sole discretion, may deem necessary or advisable. The Owner of the property shall be personally liable to the ACC for all Direct and indirect costs as may be incurred by the ACC in the performance of such restoration, and the liability for such costs shall be enforceable by the ACC through any appropriate proceeding at law or in equity.

In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Section and its decisions or those of the ACC. All costs of any such action, including reasonable attorney's fees, may be assessed against such Lot. Furthermore, the Board shall have the authority to record in the Gwinnett County land records notices of violation of the provisions of this Section.

If any Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Property in violation of this Section, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction remain on the Common Property without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction.

SECTION 9.07 **Commencement and Completion of Construction.** All improvements approved by the ACC hereunder must be commenced within one year from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. Additionally, except with written ACC approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the ACC hereunder shall be completed within 90 days of commencement.

ARTICLE X.

USE RESTRICTIONS.

SECTION 10.0 **General Statement.** Each Owner of a Lot shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of this Declaration, the Bylaws and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants or Occupants, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or Occupants.

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

SECTION 10.01 **Use of Lots**

(A) Residential Use. Each Lot shall be used for single family residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Property, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing in a dwelling on a Lot may conduct such ancillary business activities within that dwelling so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the dwelling; (b) the business activity does not involve visitation of the Lot by employees, clients, customers, suppliers or other business invitees; provided, however, this provision shall not preclude delivery of materials or items by United States Postal delivery or by other customary parcel delivery services (U.P.S., Federal Express, etc.); (c) the business activity conforms to all zoning requirements for the Property; (d) the business activity does not increase traffic in the Property; (e) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; and (f) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the Board's sole discretion.

(B) Business & Trade. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor.

SECTION. 10.02 **Number of Occupants.** Effective January 1, 1999, the Gwinnett County Property Maintenance Ordinance established maximum occupancy limits on residential properties based upon the size and use of the structure. The ordinance applies to all existing structures in the unincorporated areas of the county. The ordinance established minimum room width and height requirements as well as minimum square footage requirements of dwelling units based on the number of occupants residing in the dwelling. Every bedroom occupied by one (1) occupant must contain at least 70 square feet and bedrooms occupied by more than one occupant must contain at least 50 square feet per person. Kitchens, bathrooms, living rooms, and non-habitable spaces, including garages, cannot be used for sleeping purposes. This regulation does not apply to guests whose occupancy is not to last longer than one (1) week.

Violations of the Gwinnett County Property Maintenance Ordinance are prosecuted in the Environmental Division of Recorder's Court and are subject to a penalty of up to \$1000 and/or 60 days in jail per violation per day (minimum fine is \$250).

SECTION 10.03 **Subdivision of Lots and Outbuildings.** No Lot may be subdivided into a smaller Lot and no structure of a temporary character, trailer, boat, tent, shack, carport, garage, barn or other outbuilding shall be erected or used by any Owner or Occupant on any portion of the Property, at any time, either temporarily or permanently. Due to safety concerns, no basketball goals may be placed in front of the property or visible from the street.

SECTION 10.04 **Use of Common Property.** There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on any part of the Common Property overnight without prior written Board consent, except as specifically provided herein.

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

SECTION 10.05 **Pets & Animals.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any property, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. Those pets which are permitted to roam free, or, in the sole discretion of the Board, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the owners of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs, which are household pets, shall at all times whenever they are outside a lot be confined on a leash, without prejudice to the Board's right to remove any such household pets. No household pet that has caused damage or injury may be walked in the Community. For the safety of the entire community, all pets must have current vaccinations including rabies shots as required by Gwinnett County. All pets must wear identification tags specifying owner name and vaccinations dates.

All pets must be housed and attended to in accordance with the Gwinnett County Animal Control Ordinance. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Property without prior written Board or ACC approval. At no time may a structure for the care, housing or confinement of any pet be constructed or maintained in an area of a Lot visible from the street.

Feces left by pets upon the Common Property, on any Lot or in any dwelling, including the pet owner's Lot or dwelling, must be removed promptly by the owner of the pet or the person responsible for the pet. Feces may not be placed in the storm drains at any time.

SECTION 10.06 **Vehicles.** The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, limousines, and automobiles. Vehicles shall not be parked on any street within the Community or on any portion of a Lot other than in the garage; provided, however, if, and only if, the Occupants of a Lot have more vehicles than the number of garage parking spaces, those excess vehicles which are an Occupant's primary means of transportation on a regular basis may be parked on the driveway on the Lot.

No vehicle may be left upon any portion of the Community, except in a garage if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Any such vehicle shall be considered a nuisance and may be removed from the Community.

SECTION 10.07 **Parking.** No towed vehicle, boat, boat trailer, recreational vehicle, motor home, mobile home, bus, camper, trailer, trucks (except nick-un trucks and sport utility vehicles) or commercial vehicles with or without permanent commercial text, motorcycles, minibike, scooter, go-cart or similar recreational vehicles shall be permitted on any Lot, except if kept in an enclosed garage, for periods longer than 24 hours (the intent of this provision is that the aforementioned recreational vehicles may not be stored on a Lot except in the garage and the temporary removal of such vehicle from a Lot to break the continuity of the 24 consecutive hours shall not be sufficient to establish compliance with this restriction). Any such vehicle shall be considered a nuisance and may be removed from the community. A vehicle shall be considered "stored" if it remains on the Property, other than in the garage for fourteen (14) consecutive days or longer.

All garages must have operable garage doors. Garage conversions shall not be permitted. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage.

No motorized vehicles shall be permitted on pathways, sidewalks or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board. All parking shall be subject to such rules and regulations as the Board may adopt.

SECTION 10.08 **Abandoned Personal Property.** Personal property, other than an automobile as provided for in this Section, is prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property without prior written Board permission. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property and/or on the front door of the property owner's dwelling, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine. The notice shall include the name and telephone number of the person or entity

which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

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

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

SECTION 10.09 **Signs.** Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected, placed, or permitted to remain on the Property without the prior written consent of the Board or its designee, except as follows:

(A) two (2) professional security signs not to exceed twelve (12") inches by twelve (12") inches each in size may be displayed on a Lot;

(B) one (1) professionally lettered "For Sale" sign not to exceed two (2') feet by two (2') feet in size may be displayed on a Lot being offered for sale; and

(C) garage sale signs; provided, however such signs must be removed within twenty-four (24) hours after the sale has ended.

The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association.

SECTION 10.10 **Rubbish, Trash, and Garbage.** In order to reduce traffic, noise and damage to pavement all residents are required to use the waste management company designated by the Board. The board will make all reasonable attempts to select this company based on quality, reliability and cost. However, the Board will not be responsible for any damages, service quality or cost increases with regard to said company and will review vendor options annually.

All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except as provided herein. Rubbish, trash, and garbage shall be disposed of in appropriate sealed bags and placed in proper receptacles for collection.

All garbage cans, woodpiles, and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property; provided, however, if rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on the evening before a pick-up is to be made as necessary to provide access to Persons making such pick-up. All rubbish, trash, and garbage shall be regularly removed (no less frequently than weekly) and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the community as needed for efficient construction and to allow developers and builders within the Community to bury rocks and trees removed from a building site on such building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community .

SECTION 10.11 **Impairment of Dwellings and Easements.** An Owner shall do no act nor any work that will impair the structural soundness or integrity of another dwelling or impair any easement or hereditaments, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners or Occupants.

Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications require the use of certain means of preventing and controlling of such erosion or siltation.

SECTION 10.12 **Unightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property, except within a dwelling. Clothing, bedding, rugs, mops, toys, bicycles, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture, grills, and similar items may be kept outside of a dwelling. Same day donations placed on the curb for pick up are exempted from this provision.

SECTION 10.13 **Antennas and Satellite Dishes.** No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) larger than one meter in diameter shall be placed, allowed, or maintained upon any portion of the Property. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association authorized by the FCC, both as may be amended from time to time. Such items shall be installed on the back side of the roof or on the chimney in the least conspicuous location available on the Lot and must not be visible from the street. Except as provided by this Section, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Property, whether attached to a home or structure or otherwise.

SECTION 10.14 **Guns.** The use of firearms in the Community is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types.

SECTION 10.15 **Air Conditioner.** Except as may be permitted by the ACC, no window air conditioning units may be installed, but in no event shall a window air conditioning unit be installed in any structure so as to be visible from the front of any Lot or an adjoining street.

SECTION 10.16 **Poles & Wires.** Except during construction or repair, no facilities, including poles and wires for the transmission of electricity, television, telephone messages and like shall be installed or maintained on any Lot above the service of the ground.

SECTION 10.17 **Fences.** No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the Community, including any Lot, unless and until plans and specifications showing at least the nature, kind, shape, height, materials, color, texture and placement of such fence or fencing type barrier have been submitted in writing to, and approved in writing by, the ACC. All fences must be placed on the rear portion of any Lot, located between the rear boundary line of said Lot and the rear exterior wall of the dwelling located on the Lot. No chain link or vinyl fences shall be erected on any Lot, nor shall any fence exceed six feet in height: provided, however, that on lots 1 through 18 of Block A in The Fairways Subdivision shall have no fence erected which exceeds (4) feet in height. No fence may be erected on any Lot which encloses, crosses or blocks any portion of the common areas, such as jogging/walking trails.

SECTION 10.18 **Exterior Property Maintenance.** Property Owners shall at all times maintain their property and all appurtenances thereto in good repair and in a state of neat appearance. Except for flower gardens, shrubs, pine-strawed areas and trees which shall be neatly maintained, all open lot areas shall be maintained as lawns. All lawns shall be kept mowed and shall not be permitted to grow to a height in excess of three (3) inches. The undersigned or the authorized agents or successors and assignees of the undersigned may, after ten (10) days notice to any Lot Owner, enter upon such lot and have the grass, woods and other vegetation cut, when, and as often, as the same is necessary in their sole judgment and discretion and may also have dead trees, shrubs and other plants removed from the Property. The Lot Owner shall be personally liable to the undersigned or to the successors and assigns

of the undersigned, including the Homeowner's Association as hereinafter provided, for any cost or expenses thus incurred. Entry onto any such Lot shall be between the hours of 8:00 A.M. and 6:00 P.M. on any day except Sunday.

SECTION 10.19 **Sight Distance At Intersection.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

SECTION 10.20 **Lighting.** Except as may be permitted by the ACC, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot, (b) one (1) decorative post light, (c) street lights conformity with an established street lighting program for the Community, (d) seasonal decorative lights from Thanksgiving to the following New Year's Day (e) decorative accent lighting, and (f) security lights affixed to the house.

SECTION 10.21 **Artificial Vegetation.** No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the ACC; provided, however, the display of flags for generally recognized holidays on which flags are customarily displayed shall be permitted for a period from one (1) week prior to the date of such holiday until one (1) week after the date of such holiday.

SECTION 10.22 **Tree Removal.** No trees that are more than six (6) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the ACC.

SECTION 10.23 **Energy Conservation Equipment.** No solar energy collector panels or attendant hardware of other energy conservation equipment shall be constructed or installed unless the are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ACC.

SECTION 10.24 **Mailboxes and Posts.** All mail boxes and posts shall be the same in design and construction as determined and approved by the ACC. The Fairways maintains black mailboxes with natural wood posts and etched numbering on wooden hanging tile. The Lake maintains black mailboxes with natural wooden posts or wooden posts painted to match the trim color of the house for the lot on which it is located or a color approved by the ACC with address numbers attached to post.

SECTION 10.25 **Exteriors.** Any change to the exterior color of any improvement located on a Lot, including, without limitation, the dwelling or any fence located on a Lot, must be approved by the ACC. The approved siding for dwellings is fiber cement siding, brick, rock or stucco. No vinyl siding of any type is permitted.

SECTION 10.26 **Clotheslines.** No exterior clotheslines of any type shall be permitted upon any lot.

SECTION 10.27 **Window Treatments.** The side of all window treatments which can be seen at any time from the outside of any structure located on a Lot must be white or off white. Garage door windows must be covered with materials designed specifically for garage doors.

SECTION 10.28 **Fuel or Water Tanks Generators** No fuel tanks or water tanks shall be stored or maintained upon any Lot. Generators must be stored and utilized from garage.

SECTION 10.29 **Pollution Control.** No use of any Lot will be permitted which emits pollutants into the atmosphere or discharges liquid or solid waste or other harmful matter into any waterway in excess of environmental standards applicable thereto to be established by the ACC, which standards shall at a minimum meet the requirements of Federal and State law and any regulations thereunder applicable to the Property. No waste or any substance or materials of any kind shall be discharged into any private or public sewer serving the property, or any part thereof, in violation of any regulations of Gwinnett County, Georgia, or any private or public body having jurisdiction

SECTION 10.30 **Outbuildings and Similar Structures.** No structure of a temporary nature, unless approved in writing by the ACC, shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn or other structure may be used as a residence, either temporarily or permanently.

SECTION 10.31 **Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's Lot. No property within the community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

ARTICLE XI

LEASING.

SECTION 11.0 **General Statement.** In order to protect the equity of the individual Lot Owners at the Property, to carry out the purpose for which the Property was formed by preserving the character of the Property as a homogeneous residential community of predominantly owner-occupied homes and by preventing the Property from assuming the character of a renter-occupied apartment complex, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially owner-occupied, leasing of Lots shall be governed by the restrictions imposed by this Section. Except as provided herein, the leasing of Lots shall be prohibited.

SECTION 11.01 **Definitions.**

(1) "Effective Date" means the date this Declaration is recorded in the Gwinnett County, Georgia land records.

(2) "Grandfathered Owner" means an Owner of a Lot who is lawfully leasing his or her Lot on the Effective Date. Grandfathering shall apply only to the Lot owned by that Grandfathered Owner on the Effective Date. Grandfathering hereunder shall continue only until the date the Grandfathered Owner conveys title to the Grandfathered Lot to any other person (other than the Owner's spouse). Upon the happening of such event, the Lot shall automatically lose grandfathering hereunder.

(3) "Grandfathered Lot" means the Lot owned by a Grandfathered Owner on the Effective Date hereof.

(4) "Leasing" means the regular, exclusive occupancy of a Lot by any person(s) other than: (1) the Owner or a parent, child or spouse of an Owner, or (2) a person who occupies the Lot with the Owner or parent, child or spouse of the Owner, so long as such Owner or parent, child or spouse of the Owner is occupying the Lot as his or her primary residence.

SECTION 11.02. **Leasing Permit and Restriction.** No Owner of a Lot may lease his or her Lot unless: (1) the Owner is a Grandfathered Owner, or (2) the Owner is not a Grandfathered Owner but has received a hardship leasing permit from the Board as provided below.

SECTION 11.03 **Hardship Leasing.** Hardship leasing permits are automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Lot to a third party

(excluding sales or transfers to an Owner's spouse); or (2) the failure of an Owner to lease his or her Lot for one hundred twenty (120) consecutive days at any time after the issuance of a leasing permit.

SECTION 11.04 **Undue Hardship.** The Board shall be empowered to allow reasonable leasing of Lots, upon written application, to avoid undue hardship upon an Owner. **By way of illustration, and not by limitation**, examples of circumstances which would constitute "undue hardship" are those in which (1) an Owner must relocate his or her residence for employment purposes and cannot, within ninety (90) days from the date the Lot was placed on the market, sell the Lot for a price no greater than the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner dies and the Lot is being administered by his or her estate; and (3) where the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot, in which case the Lot Owner must reapply every year for renewal of the hardship exception. The above-stated circumstances serve only as examples of situations that may be considered an undue hardship and do not serve as an automatic guaranty of the granting of a hardship leasing permit. **The decision whether or not to grant an undue hardship leasing permit is solely within the discretion of the Board of Directors and shall be decided on a case by case basis.** Those Owners who have demonstrated that the inability to lease their Lot would result in undue hardship and have obtained the requisite approval of the Board may lease their Lots for such duration as the Board reasonably determines is necessary to prevent undue hardship.

Any Owner who believes that he or she must lease his or her Lot to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application. When leasing is approved, a copy of the lease, signed by the lessee and lessor, shall be submitted to the Board within ten (10) days after both parties have signed it.

SECTION 11.05 **Reasonable Rules & Regulations.** The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Section. Any transaction which does not comply with this Section shall be voidable at the option of the Board of Directors.

SECTION 11.06 **Leasing Provisions.** Such leasing as is permitted at The Fairways and The Lake at Berkeley Hills shall be governed by the following provisions:

(1) **Notice.** At least seven (7) days prior to entering into the lease of a Lot, the Owner shall provide the Board of Directors with a copy of the proposed lease, the name, address, and home and business telephone numbers of the proposed lessee and the names of all other people occupying the Lot, the Owner's address other than at the Lot, and such other information as the Board may reasonably require. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto. Within ten (10) days from the execution of the approved lease by both parties, the Owner shall provide the Board with a copy of the executed lease.

(2) **General.** Lots may be leased only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Lots. No transient tenants may be accommodated in a Lot. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. All leases shall be for a period of at least twelve (12) months. The Lot Owner must provide the tenant copies of the Declaration, Bylaws, and Association rules and regulations, and the lease form shall provide that the Owner has done so.

(3) **Liability for Assessments and Compliance With Declaration, Bylaws, and Rules and Regulations.** Any lease of a Lot in the Property shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into a lease by existence of this covenant on the Lot. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(a) **Liability for Assessments.** Lessor agrees to be personally obligated for the payment of all annual and special assessments and all other charges against the Owner which become due during the term of the lease and any other period of occupancy by the lessee or which become due as a consequence of lessee's activities, including, but not limited to, activities which violate provisions of the Declaration, the Bylaws, or the rules and regulations adopted pursuant thereto.

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 thirty (30) days after it is due and payable, then the delinquent Lot Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid annual and special assessments and other charges, as lawfully determined and made payable during the term of the lease and any other period of occupancy by lessee; provided, 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 late charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent lessee would be required to make such payments to the Association if lessee were the owner of the premises during the term of the agreement and any other period of occupancy by lessee.

SECTION 11.07 Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee shall abide by and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests in order to insure compliance with the foregoing. Lessee acknowledges that the violation by lessee or any Occupant living with lessee of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Owner shall cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and is responsible for all violations and losses caused by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. If the lessee, a guest, or a person living with the lessee, violates the Declaration, Bylaws, or a rule and regulation for which a fine is imposed, such fine may be assessed against the lessee and/or the Owner; provided, however, if a fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Board of the lessee's failure to do so. Unpaid fines constitute a lien against the Lot as provided for herein. Any lessee charged with a violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by lessee, any Occupant, guest, or any person living with lessee is deemed to be a violation of the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to The Berkeley Commons Home Owners Association acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee on behalf and for the benefit of the Owner, in accordance with the terms hereof, or to require the Owner to do so. In the event the Association proceeds to evict the tenant, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Lot and the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof.

SECTION 11.08 Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities and other amenities.

SECTION 11.09 Applicability of this Section 11.06. Those Owners who are Grandfathered Owners upon the effective date of this Declaration may lease their Lots and shall not be required to demonstrate undue hardship as a prerequisite to the leasing of their Lots. However, upon any conveyance or transfer of the Lot, any grantee thereof shall be subject to the provisions of this Section

11.06, in addition to all other provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto.

Leases executed after the date on which this Declaration is recorded in the Gwinnett County, Georgia records are subject to the terms of Section 7 above. Leases existing on the date which this Declaration is recorded in the Gwinnett County, Georgia records shall not be subject to the terms of Section 11.06; such leases may continue in accordance with the terms of the Original Declaration as it existed prior to the recording date of this Declaration. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with this Section 11.06. Any Owner of a Lot which is leased on the effective date of this Declaration shall place on file with the Board of Directors a copy of the lease agreement in effect within thirty (30) days of the date on which this Declaration is recorded in the Gwinnett County, Georgia records.

SECTION 11.10 **Inapplicability to Holders of First Mortgages.** This Section 11.06 shall not apply to any leasing transaction entered into by the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

ARTICLE X11

MAINTENANCE RESPONSIBILITY

SECTION 12.0 **Association's Responsibility.** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement subject to any insurance then in effect, of all landscaping grass areas, paving and other improvements situated on the Common Property. The Association shall also maintain and keep in good repair all water and sewer pipes or facilities which serve the Common Property, to the extent that such pipes and facilities are not maintained by public, private, or municipal utility companies.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard. The Association shall have the right, but not the obligation, to maintain public rights of way adjacent to the Property and other property not owned by the Association if the Board determines that such maintenance would benefit the Property.

SECTION 12.01 **Owner's Responsibility.** Each Owner shall maintain and keep his or her Lot and dwelling in good repair, condition and order. In addition, each Owner shall maintain any public right of way located between the Owner's Lot and the curb of the street(s) bordering such Lot. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto. Each Owner shall perform his or her responsibility hereunder in such manner so as not to unreasonably disturb other Lot Owners.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action

taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

SECTION 12.02 **Failure to Maintain.** If the Board determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board.

The Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board determines that an Owner has not complied with the demand given by the Association as herein provided, then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be an assessment and lien against the Owner and the Lot. If, during the course of performing its maintenance responsibilities hereunder, the Association discovers that maintenance, repair or replacement is required of an item which is the Owner's responsibility, and such maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Owner and at the Owner's expense, without prior notice to the Owner, such being deemed an emergency situation hereunder.

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

SECTION 12.03 **Maintenance Standards and Interpretation.** The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board to another term of the Board. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Section. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

ARTICLE XIII

MORTGAGEE'S RIGHTS

SECTION 13.0 **Mortgagee's Rights.** Unless more than 50 percent of the first Mortgagees or Lot Owners give their consent, the Association shall not:

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

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

SECTION 13.01 **Written Request.** Upon written request to the Association, identifying the name and address of the holder and the Lot number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:

- (A) any condemnation loss or any casualty loss which affects a material portion of the Property or any Lot on which there is a first Mortgage held by such Eligible Mortgage Holder;
- (B) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Lot Owner of any other obligation under the Association Legal Instruments which is not cured within sixty (60) days;
- (C) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (D) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

SECTION 13.02 **Association Financial Statements.** Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

ARTICLE XIV

GENERAL PROVISIONS

SECTION 14.0 **Security.** The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Property. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Lot Owner.

The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

SECTION 14.01 **Dispute Resolution.** Any Lot Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any officer or director, or the property manager of the Association. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing from the person requesting the hearing.

SECTION 14.02 **No Discrimination.** No action shall be taken by the Association or the Board of Directors which would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or handicap.

SECTION 14.03 **Indemnification.** The Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director 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 or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director 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 or director, or former officer or director, 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.

SECTION 14.04 **Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

ARTICLE XV

EMINENT DOMAIN

SECTION 15.0 **General Eminent Domain** Whenever all or any part of the Common Property shall be taken or conveyed in lieu of or under threat of condemnation by any authority having power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. If the taking involves a portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking at least fifty-one (51%) percent of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefore. The provisions of Article VII, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

SECTION 15.01 **Easements for Utilities**. There is hereby reserved to the Association blanket easements upon, across, above and under all property within the Property for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property 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 Association may have installed to serve the Property. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

ARTICLE XVI

AMENDMENTS

SECTION 16.0 **General Statement Amendments**. Except where a higher vote is required for action under any other provisions of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding fifty-one (51%) percent of the total eligible vote thereof. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and filed in the Gwinnett County, Georgia land records.

In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one (51%) percent of the votes of Lots that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with the Act, any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA").

If legal action is not instituted to challenge the validity of this Declaration or any amendment hereto within one (1) year of the recording thereof in the Gwinnett County, Georgia land records, then such amendment or document shall be presumed to be validly adopted.

SECTION 16.01 **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

SECTION 16.02 **Duration.** The covenants and restrictions of this Declaration shall run with and bind the Property perpetually to the extent provided in the Act.

SECTION 16.03 **Preparer.**

This Declaration was prepared by Berkeley Commons Board of Directors

IN WITNESS WHEREOF, the undersigned officers of Community Association of The Berkeley Commons Home Owners Association, Inc., hereby certify that the above Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Berkeley Commons (a.k.a. The Fairways and The Lake at Berkeley Hills) and the following Amended and Restated by-laws for the Community Association of The Berkeley Home Owners Association, Inc. were duly adopted by the required majority of the Association and its membership.

This 9th day of April, 2008.

Sworn to and subscribed before me this
9th day of APRIL, 2006.

James W. Cloafelder
Witness
Cindy Mai
Notary Public
[Notary Seal]

**BERKELEY COMMONS HOMEOWNERS
ASSOCIATION, INC**

By: _____ (Seal)
President
Attest: Maui Rhodes (Seal)
Secretary

[CORPORATE SEAL]

**CINDY MAI
NOTARY PUBLIC, GWINNETT COUNTY, GEORGIA
MY COMMISSION EXPIRES MAY 4TH, 2009**

Exhibit 'A'

The Fairways, Unit 1

All that tract or parcel of land lying and being in Land Lot 228 of the 6th Land District, Gwinnett County, Georgia, being 5.250 acres as shown on Final Plat for Unit 1, The Fairways, prepared by Development Consultants Group, Consulting Engineers, Planners & Surveyors, dated April 10, 1992, recorded in Plat book 55, page 261, revised May 19, 1992 at Plat Book 55, page 295, Plat Records of Gwinnett County, which plat and the record thereof are incorporated herein by reference as a part of this description.

The Lake at Berkeley Hills, Unit Two

All that tract or parcel of land lying and being in Land Lot 228 of the 6th Land District, Gwinnett County, Georgia, being 17.045 acres as shown on Final Plat for Unit One, The Lake at Berkeley Hills, prepared by Development Consultants Group, Consulting Engineers, Planners & Surveyors, dated March 10, 1992, recorded in Plat Book 56, page 32, Plat Records of Gwinnett County, which plat and the record thereof are incorporated herein by reference as a part of this description.

The Fairways, Unit 3

All that tract or parcel of land lying and being in Land Lot 228 of the 6th Land District, Gwinnett County, Georgia, being 2.650 acres as shown on Final Plat for Unit Three, The Fairways, prepared by Development Consultants Group, Consulting Engineers, Planners & Surveyors, dated September 14, 1993, recorded in Plat Book 61, page 37, revised May 24, 1994, at Plat Book 62, page 190, and last revised September 6, 1994, at Plat Book 64, page 19, Plat Records of Gwinnett County, which plat and this record thereof are incorporated herein by reference as a part of this description.

Exhibit 'B'

The Fairways, Unit 2

All that tract of parcel of land lying and being in Land Lot 228 of the 6th Land District, Gwinnett county, Georgia, being 6.316 acres as shown on Final Plat for Unit 2, The Fairways, prepared by Development Consultants Group, Consulting Engineers, Planners & Surveyors, dated January 14, 1993, recorded in Plat Book 58, page 39, revised January 14, 1993 at Plat Book 61, page 86, Plat Records of Gwinnett County, which plat and the record thereof are incorporated herein by reference as a part of this description.

The Lake at Berkeley Hills, Unit 2

All that tract of parcel of land lying and being in Land Lot 228 of the 6th Land District, Gwinnett county, Georgia, being 5.203 acres as shown on Final Plat for Unit 2, The Lake at Berkeley Hills, prepared by Development Consultants Group, Consulting Engineers, Planners & Surveyors, dated January 11, 1993, recorded in Plat Book 58, page 38, revised at Plat Book 61, page 12, and Plat Book 61, page 78, Plat Records of Gwinnett County, which plat and the record thereof are incorporated herein by reference as a part of this description.

**EXHIBIT C
AMENDED AND RESTATED BYLAWS
OF
COMMUNITY ASSOCIATION OF BERKELEY HOMEOWNERS ASSOCIATION, INC.**

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EXHIBIT C
AMENDED AND RESTATED BYLAWS
OF
COMMUNITY ASSOCIATION OF BERKELEY HOMEOWNERS ASSOCIATION, INC.

Article I.
General

SECTION 1.01 **Applicability.** These Amended and Restated Bylaws provide for the self-government of the Community Association of Berkeley Commons Homeowners Association, Inc. in accordance with the Georgia Property Owners' Association Act ("Act"), the Articles of Incorporation filed with the Secretary of State and the Declaration of Covenants, Conditions and Restrictions for Berkeley Commons Homeowners Association, Inc. recorded in the Gwinnett County, Georgia and records ("Declaration").

SECTION 1.02. **Name.** The name of the corporation is Community Association of Berkeley Commons Homeowners Association, Inc., ("Association"). The organization may, at its pleasure, by a vote of the membership body, change its name.

SECTION 1.03 **Definitions.** The terms used herein shall have their generally accepted meanings or such meanings as are specified in Paragraph 2 of the Declaration. The Declaration is incorporated herein by this reference.

SECTION 1.04 **Membership.** The classes of Membership are more fully set forth in the Declaration. As may be more fully provided below, a spouse of an Owner may exercise the powers and privileges of the Owner. If title to a Lot is held by more than one (1) Person, the Membership shall be shared in the same proportion as the title, but there shall be only one (1) Membership and one (1) vote per Lot. Membership does not include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's Membership. Membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of that Lot and may be transferred only in connection with the transfer of title.

SECTION 1.05 **Entity Owners.** In the event an Owner is a corporation, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust, or manager of such other legal entity shall be eligible to represent such entity in the affairs of the Association.

Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity which is the Owner, which will create a vacancy in any elected or appointed position within the Association in which such person may have been serving, to be filled by the Board.

SECTION 1.06 **Voting.** Each Lot shall be entitled to one equally weighted vote on all matters brought before the Association. Votes may be cast by the Owner, the Owner's spouse, or by a lawful proxy as provided below. When more than one (1) Person owns a Lot, the vote for such Lot shall be exercised as they determine between or among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot. If only one (1) co-Owner attempts to cast the vote for a Lot, it shall be conclusively presumed that such co-Owner is authorized on behalf of all co-Owners to cast the vote for such Lot. In the event of disagreement among co-owners and an attempt by two (2) or more of them to cast such vote, such Persons shall not be recognized and such vote or votes shall not be counted. No Person shall be eligible to vote, either in person or by proxy, or to be elected to the Board, if that Person is shown on the books to be more than thirty (30) days delinquent in any payment due the Association or if the Person has had its voting rights suspended for the infraction of any provision of the Declaration, these Bylaws, or any rule of the Association. If the voting rights of an Owner have been suspended, that Person shall not be counted as an eligible vote for purposes of establishing a Majority or a quorum or for purposes of amending these Bylaws or the Declaration.

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

SECTION 1.08 **Purpose** The Corporation is organized in order to carry out the purposes and exercise the powers and duties specified in the Declaration of Protective Covenants and Restrictions for the Fairways and The Lake at Berkeley Hills subdivisions, dated April 29, 1992, and amended March 27th 2008, as recorded on the records of the Clerk of the Superior Court of Gwinnett County, Georgia, as same may be amended from time to time. A copy of the aforesaid Declaration of Protective Covenants for The Fairways and the Lake at Berkeley Hills is attached hereto and incorporated herein by reference.

Article II

Meetings of Members

SECTION 2.0 **Annual Meetings** The regular annual meeting of the members shall be held during May of each year with the date, hour, and place to be set by the Board of Directors.

SECTION 2.01 **Special Meetings** Special meetings of the members may be called for any purpose at any time by the President, the Secretary, or by request of any two (2) or more Board members, or upon written petition of twenty-five (25%) percent of the Owners of Lots. Any such written petition by the Owners must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of Owners have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition, and the Secretary shall send notice of the meeting in accordance with these Bylaws.

SECTION 2.02 **Notice of Meetings** It shall be the duty of the Secretary to mail or deliver to each Owner, including each Nonresident Owner, a notice of each annual or special meeting of the Association not less than seven (7) days nor more than (60) days prior to each annual or special meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it is to be held. The notice of an annual meeting shall state the time and place of the .If any Owner wishes notice to be given at an address other than his or her Lot, the Owner shall designate such other address by written notice to the Secretary. The mailing or delivering of a meeting notice as provided in this Section shall constitute proper service of notice.

SECTION 2.03 **Waiver of Notice.** Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any Association meeting, either before or after such meeting. Attendance at the meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of notice of the time, date, and place thereof unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

SECTION 2.05 **Quorum** Except as may be provided elsewhere, the presence, in person or by proxy at the beginning of the meeting, of Owners entitled to cast twenty percent (20%) of the eligible vote of the Association shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. Owners whose voting rights have been suspended pursuant hereto shall not be counted as eligible votes toward the quorum requirement.

SECTION 2.06 **Adjournment** Any meeting of the members may be adjourned for periods not exceeding ten (10) days by vote of the Owners holding the Majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business that could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.

SECTION 2.07 **Proxy** Any Owner entitled to vote may do so by written proxy duly executed by the Owner setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery or U.S. Mail. Proxies may be revoked only by written notice delivered to the Association, except that the presence in person by the proxy giver at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy. Owners whose voting rights have been suspended hereunder may not act as proxy for another Owner. Proxy holders are limited to a maximum of five (5) proxies for any one meeting of the members.

SECTION 2.08 **Action Taken Without a Meeting** In the Board's discretion, any action that may be taken by the Association members at any annual, regular, or special meeting may be taken without a meeting by written consent, written ballot, or electronic vote, as provided below.

(a) Ballot. If the Board elects to propose a membership action by ballot in lieu of a meeting, then the Board must submit or deliver a written ballot to every Owner entitled to vote on the matter, and the ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. However, such requirements shall not apply to action by written consent in accordance with subsection (b) below, and only the Board may authorize action by ballot hereunder.

Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

All solicitations for votes by written ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the Board in order to be counted. A written ballot may not be revoked. The Association shall maintain such ballots in its file for at least three (3) years.

(b) Written Consent. Approval by written consent in lieu of a meeting shall be valid only when the number of written consents received equals or exceeds the requisite majority of the voting power for such action. Executed written consents shall be included in the minutes or filed with the Association's records. If an action of the Owners is approved by written consent hereunder, the Board shall issue written notice of such approval to all Owners who did not sign written consents. Ownership approval shall be effective ten (10) days after written notice is issued; provided, however, if the consent is to an amendment to the Declaration or Bylaws which must be recorded, the effective date shall be no earlier than the date of recording of such amendment. It shall not be necessary to follow the procedural requirements of subsection (a) above to take action by written consent under this subsection (b).

SECTION 2.09 **Order of Business.** At each meeting, the order of business shall be as follows:

1. Roll Call.
2. Reading of the minutes of the preceding meeting.
3. Reports of officers.
4. Reports of Committees.
5. Old or unfinished business.
6. New business and projects.
7. Good and welfare issues.
8. Adjournments, including review of any matters to be tabled.

Article III

Board of Directors

SECTION 3.0 **Composition** The affairs of the Association shall be governed by a Board of Directors composed of four (4) members who are also the four (4) officers specified herein. The directors shall be Owners or spouses of such Owners, provided, however, no Owner and his or her spouse or co-Owner may serve on the Board at the same time. The president of the organization shall be prohibited from serving as the Chairman of the Board of Directors.

- (A) Election & Terms The directors for the ensign year shall be those persons chosen at the annual meeting as the officers of the organization in the same manner and style as the officers of the organization and there term(s) shall expire at the same time as their respective terms as officers.
- (B) Scope of Authority._ The Board of Directors shall have the control and management of the affairs and business of the organization. Such Board of Directors shall only act in the name of the organization when it shall be regularly convened by its chairman after due notice to all the directors of such meeting.
- (C) Scope of Authority._ The Board of Directors shall have the control and management of the affairs and business of the organization. Such Board of Directors shall only act in the name of the organization when it shall be regularly convened by its chairman after due notice to all the directors of such meeting.
- (D) Quorum. Seventy-five (75%) percent of the members of the Board of Directors shall constitute a quorum and the meetings of the Board of Directors shall be held regularly

immediately preceding general membership meetings, unless such meetings are special called meetings, with written notice not less than seven (7) days prior to the scheduled meeting date.

- (E) Votes. Each director shall have one (1) vote, which may not be exercised by proxy.
- (F) Rules & Regulations of Meetings. The Board of Directors may make such rules and regulations covering its meetings as it may in its discretion determine necessary.
- (G) Chairman. The members of the Board shall elect a chairman, who may not also serve as president of the organization, and a secretary, for among their number.

SECTION 3.01 **Removal of Owners of the Board of Directors.** At any valid regular or special Association meeting, any one of more Board members may be removed with or without cause by a Majority of the owners and a successor may then and there be elected to fill the vacancy created. Moreover, any director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings or is more than sixty (60) days past due in the payment of any assessment may be removed by the vote of a Majority of the other directors. Any director whose removal has been proposed shall be given at least ten (10) days notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting.

SECTION 3.02 **Vacancies.** Vacancies in the Board caused by any reason, except the removal of a director by vote of the membership, shall be filled by the highest ranked alternative director as set forth in Section 8 below. In the case there are no alternative directors willing to accept the position, the vacancy shall be filled by a vote of the majority of the remaining directors. The successor selected shall hold office for the remainder of the term of the director being replaced.

SECTION 3.03 **Compensation** No officer shall, by reason of the office, be entitled to receive any salary or compensation.

SECTION 3.04 **Director Conflicts of Interest.** Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided that the director's interest is disclosed to the Board and the contract is approved by a Majority of the directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall not count for purposes of establishing a quorum of the Board. The interested director shall be entitled to be present at the meeting at which the proposed contract is discussed, but the director must leave the room during the discussion on such matter.

SECTION 3.05 **Meetings**

(A) Regular Meetings. Regular Board meetings may be held at such time and place as determined by the Board, but at least once every three (3) months. The newly elected Board shall meet within ten (10) days after each annual Association meeting.

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

SECTION 3.06 **Waiver of Notice** Any director at any time, in writing, may waive notice of any Board meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any Board meeting shall also constitute a waiver of notice by him or her of the time and

place of such meeting. If all directors are present at any Board meeting, no notice shall be required and any business may be transacted at such meeting.

SECTION 3.07 **Conduct of Meetings** The President shall preside over all Board meetings, and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. The presence, at the time an action is taken, of directors entitled to cast one-half of the votes of the Board shall constitute a quorum for the transaction of business. One or more directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other. Directors may not use proxies for director meetings.

SECTION 3.08 **Open Meetings** Board meetings need not be open to all Owners. However, if the Board permits Owners to attend Board meetings, then Owners other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board. Notwithstanding the above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session. The Board may order the removal of any meeting guest who, in the Board's opinion, either disrupts the conduct of business at the meeting or fails to leave the meeting upon request after an announcement of reconvening in executive session.

SECTION 3.09 **Action Without a Meeting** Any Board action required or permitted to be taken at any meeting may be taken without a meeting if a Majority of the directors consent in writing to such action. The written consents must describe the action taken and be signed by no fewer than a Majority of the directors. The written consents shall be filed with the minutes of the Board. For purposes hereof, written consents of directors may be given by electronic mail.

SECTION 3.10 **Powers and Duties.** The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Property and may do all such acts and things as are not by the Act, the Declaration, the Articles Incorporation, or these Bylaws directed to be done and exercised exclusively by the Owners. In addition to the duties imposed by these Bylaws, the Board of Directors shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

- (A) preparation and adoption of an annual budget, in which there shall be established the contribution of each Owner to the Common Expenses;
- (B) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments;
- (C) providing for the operation, care, upkeep, and maintenance of the Common Property;
- (D) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Common Property, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (D) collecting the assessments, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in O.C.G.A. Section 14-3-302, and using the proceeds to administer the Association;

- (F) making and amending rules and regulations and imposing sanctions for violation thereof, including reasonable monetary fines;
- (G) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;
- (H) making or contracting for the making of repairs, additions, and improvements to, or alterations of the Common Property in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty;
- (I) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings that may be instituted on behalf of or against the Owners concerning the Association;
- (J) obtaining and carrying insurance against casualties and liabilities, as provided in the Act and the Declaration, and paying the premium cost thereof;
- (K) paying the costs of all services rendered to the Association or its Owners and not directly chargeable to specific Owners;
- (L) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred; and
- (M) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominium associations, or other associations or corporations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.
- (N) requiring companies and individuals providing contract services for a fee to provide the Association a certificate of insurance. The certificate must include Commercial General Liability, Commercial Automobile Liability (including hired and non-owned liability) and Workers' Compensation coverage. Landscaping and other contractors that provide services on a regular basis must always provide such certificates.

SECTION 3.11 **Borrowing.** The Board shall be authorized to borrow money for any Association purpose; provided, however, the Board shall obtain approval in the same manner as provided in Paragraph 7 of the Declaration for special assessments if the total amount of such borrowing exceeds or would exceed one thousand (\$1,000.00) dollars outstanding debt at any one time.

SECTION 3.12 **Public Stands.** Except for matters involving zoning, the Board of Directors, including any individual Director, shall not take a public stand or position on behalf of the Association or its Owners without the prior affirmative approval of two-thirds (2/3) of the Owners. The Board, acting through the Association's Vice President, may take a stand regarding zoning matters, upon the approval and at the direction of a majority of the Board of Directors.

SECTION 3.13 **Liability and Indemnification of Officers and Directors.** The Association shall indemnify every officer, director and committee member against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such person in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person holds such position at the time such expenses are incurred. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such person in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Owners of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

SECTION 3.14 **Committees - Appointment & Term** All committees shall be appointed by the president of the organization and their term of office shall be for a period of one year or less if sooner terminated by the action of the president. Any permanent committees shall be established by the Board of Directors, with the members appointed by the president as deemed necessary or prudent by the Board of Directors.

Article IV **Officers**

SECTION 4.0 **Designation** The principal officers of the Association shall be the President, Vice-President, Secretary, and Treasurer. The President, Vice-President, Secretary and Treasurer must be Board members.

SECTION 4.01 **Election of Officers.** The Association officers shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the members and shall hold office at the pleasure of the Board and until a successor is elected.

SECTION 4.02 **Removal of Officers.** Upon the affirmative vote of a Majority of the Board members, any officer may be removed, either with or without cause, and a successor may be elected.

SECTION 4.03 **Vacancies.** A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board in accordance with the procedures set forth in Article III, SECTION 4 hereof.

SECTION 4.04 **President.** The President shall be the chief executive officer of the Association and shall preside at all Association and Board meetings. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code. The president shall present at each annual meeting of the organization an annual report of the work of the organization, appoint all committees, temporary or permanent, see that all books, reports and certificates as required by law are properly kept or filed, be one of the officers who may sign the checks or drafts of the organization.

SECTION 4.05 **Vice-President.** The Vice President shall, in the event of the absence or inability of the president to exercise their office, become acting president of the organization with all of the rights, privileges and powers as if he or she were the duly-elected president.

SECTION 4.06 **Secretary** The Secretary shall keep the minutes of all Association and Board meetings and shall have charge of such books and papers as the Board may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under Georgia law. The secretary shall be the official custodian of the records and seal of the organization, be one of the officers required to sign the checks and drafts of the organization, present to the membership at any meetings any communication addressed to the secretary of the organization, submit to the Board of Directors any communications which shall be addressed to the secretary of the organization and exercise all duties incident to the office of secretary.

SECTION 4.07 **Treasurer** The Treasurer shall have the care and custody of all monies belonging to the organization, be solely responsible for such monies or securities of the organization, and be one of the officers who shall sign checks or drafts of the organization. No special fund may be set aside that shall make it unnecessary for the treasurer to sign the checks or withdrawals drawn upon or issued from said account or fund.

The treasurer shall render at stated periods as the Board of Directors shall determine a written account of the finances of the organization and such report shall be physically affixed to the minutes of the Board of Directors of such meeting and shall exercise all duties incident to the office of treasurer.

SECTION 4.08 **Agreements, Contracts, Deeds, Leases, Etc.** All agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by Board resolution.

Article V. **Rule Making and Enforcement**

SECTION 5.0 **Authority and Enforcement** The Property shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Lots and the Common Property. Copies of all such rules and regulations shall be furnished to all Owners and Occupants. Any rule or regulation may be repealed by the affirmative vote or written consent of a Majority of the total Association vote at an annual or special meeting of the membership.

Every Owner and Occupant of a Lot shall comply with the Declaration, Bylaws and rules and regulations of the Association, and any lack of compliance shall entitle the Association and, in an appropriate case, one or more aggrieved Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote or to use the Common Property for violation of any duty imposed under the Declaration, these Bylaws, or any Association rules and regulations; provided, however, nothing herein shall authorize the Association or the Board to deny ingress and egress to or from a Lot. If any Occupant violates the Declaration, Bylaws or Association rules and a fine is imposed, the fine may be imposed against the Owner and/or Occupant, subject to Section 2 below. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

In any enforcement action taken by the Association under this Article V, to the maximum extent permissible, all costs incurred by the Association in abating a violation or otherwise taking action to enforce the Declaration, Bylaws or Association rules, including reasonable attorney's fees actually

incurred, may be assessed against the violating Owner and/or Occupant, pursuant to Paragraph 6 of the Declaration.

SECTION 5.01 **Fining and Suspension Procedure.** The Board shall not impose a fine or suspend the right to vote or to use the Common Property, unless and until the Association has sent or delivered written notice to the violator as provided in subsection (a) below. However, compliance with this Section 2 shall not be required for the following: (i) late charges on delinquent assessments, or (ii) suspension of voting rights if an Owner is shown on the Association's records to be more than thirty (30) days delinquent in any payment due the Association, in which case suspension of the right to vote shall be automatic.

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

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

SECTION 5.02 **Additional Enforcement Rights** Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section 2 of this Article.

The Association or its duly authorized agent shall have the power to enter a Lot or upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, or the rules and regulations. Except in situations involving repeat violations for which notice hereunder already has been given, or as otherwise specified in the Declaration, entry onto a Lot to abate or remove a violation shall be made only after ten (10) days written notice to the violating Owner.

All costs of self-help or of otherwise enforcing the Declaration, Bylaws or Association rules, including reasonable attorney's fees actually incurred by the Association, shall be assessed against the violating Owner and his or her Lot. Additionally, the Association shall have the authority to record in the Gwinnett County land records a notice of violation identifying an uncured violation of the Declaration, Bylaws or rules and regulations regarding the Lot.

Article VI **Miscellaneous**

SECTION 6.0 **Notices** All notices, demands, bills, statements or other communications given under these Bylaws or the Declaration shall be in writing and, unless prohibited under these Bylaws or the Declaration, shall be given: (1) by personal delivery to the addressee; (2) by United States mail, first class, postage prepaid; (3) by electronic mail or other electronic document; or (4) via facsimile.

Notice sent by one of the methods described above shall be deemed to have been duly given:

(a) If to a Owner Lot, at the mailing address, electronic mail address or facsimile number which the Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Lot of such Owner;

(b) If to an Occupant of a Owner Lot, to the address of the Lot occupied and/or the electronic mail address or facsimile number which the Occupant has designated in writing and filed with the Secretary; or

(c) If to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other mailing address, electronic mail address or facsimile number as shall be designated in writing and approved for use by the Association's Board of Directors

SECTION 6.01 **Severability** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws or the Declaration.

SECTION 6.02 **Captions** The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof.

SECTION 6.03 **Gender and Grammar** The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

SECTION 6.04 **Fiscal Year** The fiscal year of the Association shall begin on January 1 and end on December 31 or as may be otherwise set by Board resolution.

SECTION 6.05 **Financial Review** A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board. However, after having received the Board's financial review at the annual meeting, the Owners may, by a Majority of Owners' vote, require that the Association accounts be audited as a Common Expense by an independent accountant.

SECTION 6.06 **Conflicts** The duties and powers of the Association shall be those set forth in the Act, the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association. If there are conflicts or inconsistencies between such, then the provisions of the Act, the Georgia Nonprofit Corporation Code (as may be applicable), the Declaration, the Articles of Incorporation and these Bylaws, in that order, shall prevail, and each Owner with voting rights, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

SECTION 6.07 **Amendment** Except where a higher vote is required for action under a particular provision of the Declaration or Bylaws, these Bylaws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the total Full Owners of the Association holding fifty-one p (51%) percent of the total eligible vote of the Association. Notice of a meeting, if any, at which an amendment will be considered shall state that fact and the subject matter of the proposed amendment. No amendment shall become effective until it is certified by the President and Secretary of the Association and filed in the Gwinnett County, Georgia land records. Any amendment so certified and recorded shall be conclusively presumed to have been duly adopted in accordance with the Declaration and Bylaws. Owners whose voting rights have been suspended pursuant to the Declaration or these Bylaws shall not be counted as eligible votes toward the amendment requirement. If legal action is not instituted to challenge the validity of an amendment within one (1) year of the recording of the amendment in the Gwinnett County, Georgia land records, then such amendment shall be presumed to be validly adopted. No action to challenge any such amendment may be brought after such time.

SECTION 6.08 Books and Records.

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

(I) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;

(ii) its Bylaws or restated Bylaws and all amendments to them currently in effect;

(iii) resolutions adopted by either its Owners or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(iv) resolutions adopted by either its Owners or Board of Directors relating to the characteristics, qualification, rights, limitations, and obligations of Owners or any class or category of Owners;

(v) the minutes of all meetings of Owners and records of all actions approved by the Owners for the past three (3) years;

(vi) all written communications to Owners generally within the past three (3) years, including the financial statements furnished for the past three (3) years;

(vii) a list of the names and business or home addresses of its current directors and officers; and

(viii) its most recent annual report delivered to the Secretary of State.

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

(i) excerpts from minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the members, and records of action taken by the Owners or the Board without a meeting, to the extent not subject to inspection under subsection 9(a);

(II) accounting records of the Association; and

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

The Association may impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided anyone upon request.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Community Association of The Berkeley Commons Homeowners Association, Inc., Inc., a Georgia corporation;

That the foregoing Bylaws constitute the Amended and Restated Bylaws of said Association, as duly adopted by the Board of Directors and the Owners of the Association on the

9th day of April, 2008.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 9th day of April, 2008

THE BERKELEY COMMONS HOMEOWNERS ASSOCIATION, INC., INC.

This 9th day of April, 2008.

Sworn to and subscribed before me this

9th day of APRIL, 2008.

James W. Clafut
Witness

Cindy Mai
Notary Public

[Notary Seal]

CINDY MAI
NOTARY PUBLIC, GWINNETT COUNTY, GEORGIA
MY COMMISSION EXPIRES MAY 4TH, 2009

BERKELEY COMMONS HOMEOWNERS ASSOCIATION, INC

By:

[Signature]
President

Attest:

[Signature] (Seal)
Secretary

[CORPORATE SEAL]

**EXHIBIT "C"
AMENDED AND RESTATED BYLAWS
OF
COMMUNITY ASSOCIATION OF THE BERKELEY COMMONS HOMEOWNERS ASSOCIATION, INC.**