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GWINNETT COUNTY, GA.  
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TOM LAWLER, CLERK**

311618 - 22

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**WHITFIELD ESTATES**

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

WHITFIELD ESTATES

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WHITFIELD ESTATES ("Declaration") is made by WHITFIELD COMMUNITIES, LLC, a Georgia limited liability company ("Declarant").

PART ONE: INTRODUCTION TO THE COMMUNITY

Article I Creation of the Community

*This Declaration is being recorded to replace and supercede that certain Declaration of Covenants, Conditions and Restrictions ("Previous Declaration") for Whitfield Estates Subdivision filed October 3, 2007 by Road Fence Sub, Inc. ("Borrower"), recorded in Deed Book 48325, Page 107, Gwinnett County, Georgia Records. Pursuant to that certain Deed Under Power of Sale dated January 6, 2010 from The Brand Banking Company as Attorney-in-Fact for Road Fence Sub, Inc. as grantor and The Brand Banking Company as grantee, filed for record in Deed Book 49903, Page 644, the Previous Declaration was no longer applicable as The Brand Banking Company had a secured interest in the property which was recorded previous in time to the Previous Declaration (and the consent of The Brand Banking Company was not obtained for the Previous Declaration). Therefore, Declarant wishes to establish this Declaration and the Association (as that term is hereinafter defined) to govern the community known as Whitfield Estates.*

By recording this Declaration in the Public Records of Gwinnett County, Georgia, the Declarant intends to establish a general plan of development for, and to provide for the overall governance, administration, maintenance, and preservation of the community known as Whitfield Estates (the "Community"). This Declaration sets forth various rights and duties which will be binding on and are intended to benefit each Unit and each present and future property owner in the Community. The provisions of this Declaration work together to establish a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of the Community.

The Declarant has established WHITFIELD ESTATES COMMUNITY ASSOCIATION, INC., a Georgia nonprofit corporation (the "Association"), to own and operate those areas of the Community which are intended for the common use and benefit of all owners, to maintain such Common Areas and certain other portions of the Community, and to administer and enforce the provisions of this Declaration and the other documents referenced in this Declaration. Each owner of property in the Community will be a member of the Association and, through such membership, will have the opportunity to participate in the governance and administration of the Community.

This document does not, and is not intended to, create a condominium under Georgia law.

## Article II Concepts and Definitions

The terms used in this Declaration and the attached exhibits are intended to have their normal, commonly understood definitions, unless otherwise specified. In order to minimize repetition, avoid confusion, and explain key concepts, some terms are capitalized to indicate that they have special definitions. Whenever used in their capitalized form, the following terms shall have the specified meanings:

**"Architectural Guidelines"**: The guidelines, standards, and procedures adopted pursuant to Article IV which relate to construction, installation, placement, and modification of structures, improvements, landscaping, and other items on Units.

**"Architectural Review Committee"** or **"ARC"**: The committee formed pursuant to the terms of Section 4.2 that shall have authority over review and action on applications for architectural approval after Declarant's right to do so has ceased.

**"Area of Common Responsibility"**: Those areas within or abutting the Community that the Association is authorized or responsible for maintaining as a Common Expense, including:

- (a) the Common Area;
- (b) all landscaping, entry features, and signage within or adjacent to public rights-of-way, to the extent that such public rights-of-way run through or adjacent to the Community;
- (c) those portions of Units for which the Association has maintenance responsibility pursuant to Section 3.1; and
- (d) such other areas, if any, for which the Association is assigned or assumes responsibility pursuant to this Declaration, any Supplemental Declaration, or any agreement with the owner of the property.

**"Articles of Incorporation"** or **"Articles"**: The Articles of Incorporation of Whitfield Estates Community Association, Inc., as filed with the Secretary of State of the State of Georgia.

**"Assessment"**: An amount of money which the Owner of a Unit is obligated to pay to the Association and which, until paid, constitutes a lien on the title to the Unit which may be foreclosed in the same manner as a Mortgage under Georgia law.

**"Association"**: Whitfield Estates Community Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

**"Board of Directors"** or **"Board"**: The body responsible for administration of the Association, selected as provided in the By-Laws and serving the same role as the board of directors under Georgia corporate law.

**"By-Laws"**: The By-Laws of Whitfield Estates Community Association, Inc., attached as Exhibit "D," as they may be amended.

**"Common Area"**: All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and

enjoyment of the Owners, including any landscaping, walkways, parking areas, swimming pool, tennis courts, recreational facilities and other structures on and improvements to such real property.

"Common Expenses": The expenses which the Association incurs, or expects to incur, in exercising its authority and performing its responsibilities under the Governing Documents and Georgia law, and reasonable contributions to reserve funds, as the Board may find necessary and appropriate.

"Community": The real property described in Exhibit "A," along with such additional property as is submitted to the terms of this Declaration in accordance with Article XII.

"Community-Wide Standard": The standard of conduct, maintenance, and appearance generally prevailing throughout the Community, or the minimum standards which the Declarant, the Board, or the Architectural Review Committee may establish for the Community as set forth in the Restrictions and Rules, the Architectural Guidelines, or by resolution or example, whichever is a higher standard. Such standard may contain both objective and subjective elements.

"Declarant": WHITEFIELD COMMUNITIES, LLC, a Georgia limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property in the Community for the purpose of development and/or resale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

"Developer Control Period": The period of time during which the Declarant, by virtue of its Class "B" membership, is entitled to appoint a majority of the members of the Board of Directors pursuant to the By-Laws.

"General Assessment": Assessments to fund Common Expenses for the general benefit of all Units, as described in Section 8.2(a).

"Governing Documents": The Articles of Incorporation, the By-Laws, this Declaration, any Supplemental Declaration, the Architectural Guidelines, and the Restrictions and Rules, or any of the above, as each may be amended from time to time.

"Member": A Person holding a membership in the Association pursuant to Section 6.1.

"Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. A "Mortgagee" is the beneficiary or holder of a Mortgage.

"Owner": One or more Persons who hold the record title to any Unit, other than a Mortgagee or other Person holding title merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale and the contract specifically so provides, the purchaser (farther than the fee owner) will be considered the Owner.

"Permitted Units": The maximum number of Units which may be developed within the property described in Exhibits "A" and "B" under applicable zoning.



**"Person"**: A human being, a corporation, a partnership, a trust, or any other entity recognized by law.

**"Public Records"**: The Office of the Clerk of the Superior Court or such other place as may be designated as the official location for recording of deeds and similar documents affecting title to real estate in Gwinnett County, Georgia.

**"Restrictions and Rules"**: The restrictions and rules relating to uses, activities, and conduct within the Community set forth on Exhibit "C," as they may be modified, expanded, and repealed pursuant to the procedures described in Article V.

**"Special Assessment"**: Assessments to cover unanticipated Common Expenses or Common Expenses in excess of those budgeted, as described in Section 8.2(b).

**"Specific Assessment"**: An Assessment against a particular Unit or Units for expenses that the Association incurs or expects to incur for any purpose described in Section 8.2(c).

**"Supplemental Declaration"**: An instrument filed in the Public Records pursuant to Article XII which expands the Community by submitting additional property to this Declaration, imposes additional restrictions and obligations on the land described in such instrument, or both.

**"Unit"**: A portion of the Community, whether improved or unimproved, which is depicted as a separately numbered parcel on the recorded subdivision plat of any portion of the Community, which may be independently owned and conveyed, and which is improved or intended to be improved with a single family residential dwelling. The term shall refer to the land, if any, which is part of the Unit as well as any improvements on the Unit. The term shall not include Common Areas or property dedicated to the public.

## **PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

### **Article III Maintenance and Repair of Units**

#### **3.1. Maintenance of Units.**

Each Owner shall be responsible for maintenance, repair, and replacement of all portions of his or her Unit, and shall keep it in good order and repair, and in a neat, clean, and attractive condition consistent with the Community-Wide Standard. Owners shall not permit any structures, equipment, or other items on the exterior portions of a Unit to become rusty, dilapidated, or otherwise fall into disrepair.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and levy a Specific Assessment for all costs incurred by the Association against the Unit and the Owner.

The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

3.2. Association's Responsibility.

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (i) the Common Area, open space, and all landscaping signage, lighting, irrigation systems and equipment, fences, walls, and other structures and improvements situated on the Common Area;
- (ii) landscaping and signage within public rights-of-way within the Community;
- (iii) any lakes, ponds, streams, and/or wetlands located within the Community and all drainage systems and storm water retention or detention systems for the Community, including any retaining walls, bulkheads, or dams (earthen or otherwise);
- (iv) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) There are hereby reserved to the Association easements over the Community as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and improvements within the Area of Common Responsibility in continuous operation; except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described in Exhibits "A" and "B" of this Declaration.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessments, without prejudice to the right of the Association to seek reimbursement from the owner(s) of or other Persons responsible for certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

3.3. Insurance on Units; Damage to Units.

(a) Required Coverage. Each Owner shall obtain and maintain in effect at all times: (i) property insurance for the full replacement cost, less a reasonable deductible, of all insurable improvements on his or her Unit; and (ii) insurance covering consequential damages to any other Unit or the Common Area due to occurrences originating within the Owner's Unit caused by the

negligence of the Owner, the failure of the Owner to maintain the Unit, and any other casualty within such Owner's Unit which causes damage to the Units or the Common Area.

(b) Repair and Reconstruction. In the event of damage to or destruction of any structures or improvements on the Unit, the Owner shall proceed promptly to repair, reconstruct or replace the damaged structures or improvements in a manner consistent with their original condition or such other plans and specifications as are approved in accordance with Article IV. The Owner shall pay any costs which are not covered by insurance proceeds.

### 3.4. Standard of Performance.

Unless otherwise specifically provided herein or in other instruments creating and assigning such responsibility, responsibility for maintenance shall include responsibility for repair and replacement as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

## Article IV Architectural Standards

No person shall commence any activities within the scope of Section 4.1 ("Work") on any Unit unless and until the Owner of the Unit submits an application for approval of the proposed Work and such application is approved in writing by the Declarant or the Architectural Review Committee appointed pursuant to Section 4.2.

### 4.1. Applicability.

- (a) No person other than the Declarant or the Association shall:
- (i) construct, place, or install any structures or other improvements on a Unit or alter the exterior of any existing structures or improvements (except those devices specifically permitted without approval pursuant to the Architectural Guidelines or Exhibit "C");
  - (ii) plant, install, or remove any trees, shrubs, or other landscaping materials or make any encroachment onto the Common Area;

except in compliance with this Article and the Architectural Guidelines adopted pursuant to Section 4.3.

(b) This Article shall not apply to:

- (i) improvements, renovations, or alterations within the interior of the Unit, provided they are not visible from outside of the structure and do not conflict with this Declaration or impair the structural integrity of any portion of the structure or adjacent Units;
- (ii) repairs, maintenance, or rebuilding of existing structures in accordance with original plans and specifications;

(iii) the Declarant's activities; and

(iv) the Association's activities during the Developer Control Period.

#### 4.2. Architectural Review.

So long as the Declarant owns any property described in Exhibit "A" or "B" to this Declaration which is or may become a part of the Community, the Declarant shall have the exclusive authority to review and act upon all applications for approval and to exercise all authority of the "Reviewer" under this Article. Thereafter, such authority shall be exercised by the Architectural Review Committee comprised of three to five persons appointed by the Board, the members of which shall serve and may be removed and replaced in the Board's discretion. (For purposes of this Article, the "Reviewer" shall refer to the Declarant or the ARC, as appropriate under the circumstances).

The Declarant may, from time to time, but shall not be obligated to, delegate all or a portion of its authority to the ARC. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (i) the right of Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) the right of Declarant to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the authority and jurisdiction of the ARC shall be limited to such matters as Declarant specifically delegates to the ARC.

The Declarant or, upon passing of its authority to the ARC, the Board, may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. The Declarant or the ARC may retain architects, engineers, or other professionals to assist in reviewing any application and may charge the fees of any such professionals to the applicant.

#### 4.3. Guidelines and Procedures.

(a) Architectural Guidelines. Declarant or the Board may prepare Architectural Guidelines for the Community to provide guidance in submitting applications and to establish minimum standards for certain types of modifications to Units. Copies of the Architectural Guidelines shall be made available to any Owner upon request. Any such Architectural Guidelines are intended to provide guidance regarding matters of particular concern in considering applications for architectural approval, but shall not be the exclusive basis for decisions of the Reviewer. Compliance with the Architectural Guidelines does not guarantee approval of any application.

All Work shall be conducted in strict compliance with any applicable Architectural Guidelines in effect at the time the application for such Work is approved, unless the Reviewer has granted a variance in writing pursuant to Section 4.5. So long as the Reviewer has acted in good faith, its findings and conclusions with respect to acceptability or appropriateness of proposed Work, and applicability of or compliance with the Architectural Guidelines and this Declaration, shall be final.

The Declarant shall have sole and full authority to amend the Architectural Guidelines as long as it has jurisdiction over architectural matters pursuant to Section 4.2. Thereafter, the ARC shall have the authority to amend the Architectural Guidelines. Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines; amendments may eliminate requirements previously imposed or otherwise make the Architectural Guidelines more or less restrictive.

(b) Procedures. An application for approval of any proposed Work shall be in the form required by the Reviewer and shall include plans and specifications ("Plans") in such detail as the Reviewer reasonably deems appropriate to evaluate such matters as the location, size, materials, manner of construction or installation, and other features of the proposed Work which the Reviewer deems relevant. The Reviewer may require the submission of such additional information as it deems necessary to consider any application. The Reviewer may refuse to consider any application if the Reviewer determines, in its reasonable discretion, that the Plans are not sufficiently legible, precise, or detailed or are otherwise insufficient in any respect.

In reviewing each submission, the Reviewer may consider (but shall not be limited to consideration of) quality of workmanship and design and compliance with the general intent of the Architectural Guidelines and the general scheme of development for the Community.

Decisions of the Reviewer may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements and as the Reviewer and members of the ARC change over time.

The Reviewer shall, within 30 days after receipt of each complete application or other required submission, advise the applicant, in writing at an address specified in the application, of (i) the approval of Plans, or (ii) the disapproval of such Plans, specifying the features of the Plans which are objectionable and suggestions, if any, for the curing of such objections. In the event the Reviewer fails to so advise the applicant by written notice within such 30-day period, the applicant may give the Reviewer written notice of such failure to respond. If the Reviewer has still not responded within 10 days after receipt of such notice, approval shall be deemed granted. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines unless a variance has been granted in writing pursuant to Section 4.5.

Notice shall be deemed to have been given at the time the envelope containing such notice, property addressed, and postage prepaid, is deposited with the U. S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice, shall, however, be sufficient and shall be deemed to have been given at the time of delivery.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, Declarant or the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard as

provided for in the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

All Work shall be completed within 180 days of commencement or such shorter period as the Reviewer may specify in the notice of approval, unless completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Reviewer.

#### 4.4. No Waiver of Future Approvals.

Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

#### 4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when special circumstances require. However, the ARC may not authorize variances without the written consent of Declarant as long as the Declarant has any authority over architectural matters. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) preclude the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain necessary governmental approvals or permits, or to satisfy the terms or conditions of any financing, shall not be considered a hardship warranting a variance.

#### 4.6. Limitation of Liability.

The standards and procedures established pursuant to this Article are intended only to provide a mechanism for maintaining and enhancing the overall appearance and attractiveness of the Community, and shall not create any duty or responsibility to any Person to ensure the structural integrity or soundness of approved Work, the adequacy of soils or drainage, compliance with building codes and other governmental requirements, or any other matter. Neither Declarant, the Association, the Board, the ARC, nor any member of any of the foregoing shall be held liable for any injury, damages, or loss to any Person arising out of the approval or disapproval of any proposed Work. The Association shall defend the ARC and its members and reimburse them for any loss, damages, and expenses incurred in any action arising out of their service on the ARC, to the extent provided in the Articles of Incorporation.

### Article V Use and Conduct

#### 5.1. Framework for Regulation.

Initial Restrictions and Rules governing use, conduct, and activities within the Community are set forth on Exhibit "C." This Article establishes procedures for adopting additional rules which interpret, expand, modify, or repeal the Initial Restrictions and Rules set forth on Exhibit "C" in order to respond to unforeseen circumstances and changes in conditions, needs, desires, trends, and technology which inevitably will affect the Community.

5.2. Rule Making Authority and Procedures.

(a) Authority.

(i). Subject to the terms of this Article and its duty to exercise business judgment and act reasonably, the Board may adopt rules applicable to the Common Area or Units. Except to the extent that the Governing Documents specifically assign authority to regulate a particular matter to the Board, any rulemaking action by the Board may be overturned by a majority vote of the Members pursuant to subsection (b) and the disapproval of the Class "B" Member, if any. The Board shall have no obligation to call for a vote of the membership except upon receipt of a petition of the members calling for a special meeting, as provided for in the By-Laws.

(ii) Subject to the terms of this Article, the Members may adopt rules applicable to the Common Area or Units upon the approval of a majority of the total Class "A" votes in the Association, with the consent of the Class "B" Member, if any.

(iii) Nothing in this Article shall authorize the Board or the Members to modify, repeal, or expand the Architectural Guidelines. In the event of any inconsistency between the Architectural Guidelines and the Restrictions and Rules, the Architectural Guidelines shall control.

(iv) The procedures required under this Section 5.2 shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, parking regulations and traffic controls.

(b) Notice to Owners. No rulemaking action shall be taken unless and until a meeting of the Board or the membership has been called to consider and discuss the proposed action. The notice of any meeting at which proposed rulemaking action is to be considered shall state that fact. Members shall have a reasonable opportunity to be heard at such meeting prior to any vote being taken on the proposed action. At least 10 days prior to the effective date of any rulemaking action approved under this Section, the Board shall send a notice to each Owner describing the action and its effective date.

5.3. Owners' Acknowledgment.

All Owners and occupants of Units are given notice that use of their Units and the Common Area is limited by the Restrictions and Rules as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into and recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the Restrictions and Rules may change from time to time. All purchasers of Units are on notice that the Association may have adopted changes. Copies of the current Restrictions and Rules may be obtained from the Association.

5.4. Rights of Owners.

(a) The Association shall provide, without cost, a copy of the current Restrictions and Rules to any requesting Member or Mortgagee.

(b) Except as may be specifically set forth in this Declaration (either initially or by amendment) or in Exhibit "C," neither the Board nor the Members may adopt any rule in violation of the following provisions:

(i) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

(ii) Activities Within Dwellings. No rule shall interfere with the activities carried on inside of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, that create an unreasonable source of annoyance or nuisance to the neighborhood, or that create any noxious or offensive activity.

(iii) Alienation. No rule shall prohibit the sale of any Unit, or require the consent of the Association or Board prior to the sale of any Unit.

(iv) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the Units or discriminate among Owners with respect to their rights to use the Common Area over the objection of any Owner expressed in writing to the Association. Nothing in this provision shall prevent the Association from adopting generally applicable rules for use of Common Area, or from assigning use of parking space on an equal basis among all Units. This provision does not affect the right to increase the amount of Assessments as provided in Article VIII.

(v) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power, subject to applicable law, to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(vi) Signs and Displays. No rule shall prohibit Owners or occupants from displaying religious and holiday signs, symbols, and decorations in windows or doors of their Units of the kinds normally displayed in residential neighborhoods; however, the Association may regulate the time, place, manner, and extent of such displays for the purpose of minimizing disturbance to other Owners and occupants. No rules shall regulate the content of political signs; however, rules may regulate the time, place, and manner of posting such signs and establish design criteria for such signs.

(vii) Similar Treatment. Similarly situated Owners shall be treated similarly.



(viii) Speech. No rule shall restrict the freedom of speech of Owners or occupants, except that the Association may adopt time, place, and manner restrictions for the purpose of minimizing disturbance to other Owners and occupants of Units.

(ix) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Community.

The limitations in this Section 5.4 shall apply to the exercise of the rulemaking authority under this Article only; they shall not apply to amendments to this Declaration adopted in accordance with Section 19.2.

### **PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION**

#### **Article VI Association Membership and Voting Rights**

##### 6.1. Membership.

(a) Qualification. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation. All co-Owners of a Unit shall be jointly obligated to perform the responsibilities of the Owner of the Unit, and any one co-Owner may be held fully responsible for all such obligations. The membership rights of an Owner which is a corporation, partnership, trust, or other entity may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Association's Secretary.

(b) Classes. The Association initially shall have two classes of membership, Class "A" and Class "B," with such rights and privileges as are described in this Declaration and in the Association's Articles and By-Laws. Class "A" Members shall be all Owners except the Class "B" Member, if any. The sole Class "B" Member shall be the Declarant. The Class "B" membership shall terminate 30 days after the earlier of:

(i) the date upon which 75% of the Permitted Units have been improved with a dwelling approved for occupancy and have been conveyed to Class "A" Members;

(ii) seven years after the date on which this Declaration was recorded in the Public Records; or

(iii) the date upon which the Declarant voluntarily terminates such membership by written notice recorded in the Public Records.

Upon termination of the Class "B" membership, the Declarant shall become a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

##### 6.2. Voting.

(a) Class "A". Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 6.1; however, there shall be only one vote per Unit. In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the

Association's Secretary in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B". The Class "B" Member shall not have any specific number of votes, rather, the consent or approval of the Class "B" Member is required for certain actions as specified in the relevant sections of the Governing Documents. The Class "B" Member is also entitled to appoint members of the Board of Directors during the Developer Control Period, as specified in Sections 3.3 and 3.5 of the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents.

(c) Manner of Voting. On any matter as to which the Governing Documents or Georgia law require a vote or approval of the membership, such vote or approval may be obtained by affirmative vote at a meeting or by written consent, or by any combination thereof, unless the Governing Documents or Georgia law expressly require that the vote on such matter be taken at a meeting of the membership.

## **Article VII Association Powers and Responsibilities**

### **7.1. Function of the Association**

The Association has been established for the purpose of administering the Community in accordance with the Governing Documents. Its responsibilities include, but are not limited to:

- (a) management, maintenance, operation, and control of the Area of Common Responsibility;
- (b) enforcing the Governing Documents, including such reasonable rules regulating use, conduct, activities, and aesthetic matters within the Community as may be set forth in or adopted pursuant to this Declaration; and
- (c) administering and enforcing the architectural standards set forth in Article IV and in the Architectural Guidelines, upon delegation or termination of the Declarant's authority under Article IV.

### **7.2. Implied Rights; Board Authority**

The Association shall have the powers and authority granted by, and shall perform its functions in accordance with, the Governing Documents and the laws of the State of Georgia. The Association shall also have any right, power, or privilege which may reasonably be implied from, or which is reasonably necessary to exercise, any right, power, or privilege expressly granted by the Governing Documents or by law. Except as the Governing Documents or Georgia law may otherwise specifically provide, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

### **7.3. Area of Common Responsibility**

The Association shall operate the Common Areas and maintain the Area of Common Responsibility in good repair and in a neat, clean, and attractive condition consistent with the

Community-Wide Standard. By way of example and not limitation, the Association's responsibility shall include:

- (a) maintaining and operating the Common Area and the facilities, improvements, and landscaping thereon, including, without limitation, entry features, entry signage, pond or lake, any detention pond, and any street lights or other lighting located on Common Areas; and
- (b) maintaining those portions of Units for which the Association is assigned or assumes responsibility pursuant to this Declaration including, but not limited to, lawn mowing as provided in Section 3.2; and

The Association may maintain other property that it does not own, including, without limitation, storm drainage facilities and other property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as the Governing Documents may otherwise specifically provide, all costs associated with operation of Common Areas and maintenance, repair, or replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment. The Board may, however, allocate the expense of any maintenance, repair, or replacement that benefits one or more, but less than all Units, as a Specific Assessment pursuant to Section 8.2(c), according to the benefit received by such Units, as the Board may reasonably determine.

The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property that it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

#### 7.4. Association Insurance.

(a) Required Coverage. The Association shall obtain and maintain at all times as a Common Expense, the following insurance coverage:

(i) property insurance on the Common Areas insuring against all risks of direct physical loss commonly insured against. The total amount of such insurance, after application of any deductibles, shall not be less than 80% of the actual cash value of the insured property (exclusive of land, excavations, foundations, and other items normally excluded from "all risk" property insurance policies); however, the Board shall be authorized to obtain coverage for 100% of the replacement cost of such insurable improvements;

(ii) comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board in the exercise of its business judgment, but with a combined single limit of not less than One Million Dollars (\$1,000,000.00), to the extent reasonably available, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Area of Common Responsibility;

(iii) officers' and directors' liability insurance in such amounts as the Board, in its business judgment, may determine necessary, but not less than One Million Dollars (\$1,000,000.00) per occurrence, (if reasonably available);

(iv) fidelity bonds covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds, if reasonably available (the amount of such bonds shall be in an amount which, in the Board's business judgment, reflects the estimated maximum amount of funds, including reserve funds, in the custody of the Association at any time during the term of the bond);

(v) flood insurance, if the Board of Directors determines it necessary or advisable;

(vi) worker's compensation insurance, if and to the extent necessary to meet the requirements of law; and

(vii) such other insurance as the Board determines to be necessary or advisable.

The Board shall conduct an insurance review to determine the adequacy of insurance coverage at least once every two years. Each Owner shall have the right to obtain additional coverage at his or her own expense, for improvements made by such Owner. All policies may contain reasonable deductibles. Each Unit Owner shall notify the Board of any structural improvements made by the Owner to his or her Unit.

(b) Policy Requirements. All insurance coverage obtained by the Association shall be written in the name of the Association as trustee for the Owners and the Mortgagees of Units, as their interests may appear. Each Owner shall be an insured person under the liability insurance policy with respect to liability arising out of his or her membership in the Association. In addition, the policies providing the coverage required under clauses (i) and (ii) of subsection (a) above shall provide that the insurer waives its rights of subrogation against any Owner or members of an Owner's household; that any "other insurance" clause contained in the policy expressly excludes an Owner's policies from its operation; and that no act or omission by any Owner, unless acting within the scope of his or her authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

In addition to the above, the Board shall use reasonable efforts to secure policies providing:

(i) that the policy cannot be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Association, or the managing agent, nor may the conduct of any of the above be made a condition to recovery under the policy;

(ii) that the policy may not be jeopardized, canceled, or substantially modified without at least 30 days' prior notice in writing to the Board, all Owners, and each Mortgagee to whom certificates of insurance have been issued; and

(iii) an agreed value endorsement and an inflation guard endorsement.

All policies of insurance shall be written with companies licensed to do business in the State of Georgia. Such companies shall issue certificates or memoranda of insurance to the Association, and, if requested in writing, to any Owner or Mortgagee so requesting.

(c) Insurance Deductibles. In the event of an insured loss giving rise to a claim under property insurance carried by the Association, the amount of the deductible shall be considered a maintenance expense to be paid by the Person or Persons (including the Association) who would otherwise be responsible for such repair in the absence of insurance, except that if the loss under a policy maintained by the Association affects more than one Unit or a Unit and the Common Area, the cost of the deductible shall be a Common Expense.

(d) Association's Insurance Coverage Primary. To the extent that the Association is required to maintain insurance under this Section 7.4, the Association's insurance shall be primary and shall not be brought into contribution with individual policies of insurance purchased by Owners or their Mortgagees.

(e) Limitations. Nothing in this Section 7.4 gives any Owner or other party a priority over any rights of first Mortgagees as to distribution of insurance proceeds.

(f) Repair and Reconstruction After Casualty Loss. In the event of damage to or destruction of all or part of the Community insured under policies maintained by the Association, as a result of fire or other casualty, unless (i) this Declaration is terminated, (ii) reconstruction or repair is prohibited by law or by local health or safety statute, or (iii) Owners holding at least 75% of the total Association vote, including the Owner(s) of the damaged Unit(s), if applicable, 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 accordance with the original plats of survey and floor plans. In the event of substantial damage or destruction, each Mortgagee shall be entitled to written notice of the damage, and nothing in the Governing Documents shall be construed to afford a priority to any Owner with respect to the distribution of proceeds to any such Unit.

The procedure for repair and reconstruction shall be:

(i) Immediately after a fire or other casualty causing damage to any portion of the Area of Common Responsibility, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures to a condition as good as that which existed before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(ii) 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, Special Assessments shall be made against all of the Units without necessity of approval of the membership. 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.

(iii) Any such reconstruction or repair shall be substantially in accordance with the plats of survey, floor plans, and specifications under which the damaged structures were originally constructed.

(iv) Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a basis for any claim, proceeding, or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the plats of survey, floor plans, and specifications under which the improvements were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(v) The net proceeds of the insurance collected because of a casualty and the funds collected by the Association from Assessments against Owners because of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this subparagraph.

(vi) The construction fund shall be paid by the Association in appropriate progress payments to such contractors, suppliers, and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as the Board may designate.

#### 7.5. Safety and Security.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their personal property and Unit. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security within the Community. However, neither the Association nor the Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Each Owner acknowledges, understands, and agrees to inform any and all tenants and occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor or assign of each are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

#### 7.6. Provision of Services.

The Association may arrange for or provide services to the Owners and their Units and shall be authorized to enter into contracts or other agreements with third parties, including Declarant, to provide such services. By way of example, such services may include trash collection, pest control, cable television service, fire protection, security monitoring, and other similar services, although the Association shall have no obligation to provide any such services. The Board may modify or cancel any services provided to the Owners and their Units at any time in its discretion.

The cost of any such services provided to all Units pursuant to any bulk agreement with the Association shall be a Common Expense and/or the Association may charge use and consumption fees for selected services. No Owner shall be exempt from the obligation to pay for any such services undertaken as a Common Expense based upon non-use or any other reason.

#### Article VIII Association Finances

##### 8.1. Budgeting for Common Expenses.

At least 60 days before the beginning of each fiscal year, the Board shall prepare an operating budget reflecting the estimated Common Expenses which the Association expects to incur during the coming year. The budget shall separately list (i) those Common Expenses which benefit and are to be allocated among all Units, and (ii) those Common Expenses, if any, which benefit and are to be allocated among less than all Units.

The budget may include a contribution to one or more reserve funds, and shall include an annual contribution to a reserve fund for repair and replacement of any assets for which the Association is responsible which have an expected useful life of three years or more. The amount of such contribution shall be based upon the Board's reasonable estimate of the annual contribution needed over the remaining estimated useful life of each asset to provide sufficient funds for repair or replacement of such asset as required.

The Board shall send a copy of the budget to each Owner at least 45 days prior to the effective date of such budget. The budget shall automatically take effect on the date specified by the Board unless Members entitled to cast at least 75% of the total Class "A" votes in the Association veto such budget at a meeting of the Members. The Board shall have no duty to call a meeting of the Members except upon receipt, within 10 days after the budget is sent to each Owner, of a petition signed by the Members as required for a special meeting pursuant to the By-Laws.

The Board may revise the budget from time to time during the fiscal year to reflect unanticipated expenses or changes in anticipated expenses, as the Board deems appropriate. The Board shall provide a copy of any revised budget to the Members and the Members shall have the right to veto any change from the budget previously in effect, in the same manner as described above.

If a budget is not adopted for any year, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year.

##### 8.2. Funding Common Expenses.

The Association is authorized to levy three types of Assessments to cover the Common Expenses of the Association, as follows:

(a) General Assessments. Common Expenses as reflected in the annual operating budget which directly or indirectly benefit all of the Units shall be allocated equally among all of the Units which are subject to Assessment under Section 8.3 as a General Assessment. The Board shall determine the amount of the General Assessment for each fiscal year at the time the budget is prepared, subject to adjustment in the event that the budget is revised during the year.

Notice of the amount of the General Assessment, as it may be adjusted, shall be sent to each Owner with a copy of the budget.

The General Assessment shall be an annual Assessment due and payable in advance on the first day of each fiscal year; however, the Board may permit any General Assessment to be paid in monthly, quarterly, or semi-annual installments, in its discretion.

(b) Special Assessments. Any Common Expenses of a non-routine nature, or which were not anticipated in the Association's annual operating budget, or which exceed budgeted amounts, may be assessed as a Special Assessment. Special Assessments shall be allocated equally among all Units subject to Assessment. Special Assessments shall be payable in such manner and at such times as the Board may determine, and may be payable in installments over a period of more than one year.

Notice of any Special Assessment shall be sent to each Owner at least 45 days prior to the due date of such Special Assessment (or the first installment thereof). Any Special Assessment may be vetoed by the Members in the same manner and by the same vote as the annual operating budget pursuant to Section 8.1.

(c) Specific Assessments. The Association may assess the following expenses as a Specific Assessment against a particular Unit or Units:

(i) those costs, including overhead and administrative costs, of providing benefits, items, or services to a Unit or the occupants thereof upon request of the Owner, which Assessments may be made in advance of the provision of the requested benefit, item, or service as a deposit against costs to be incurred on behalf of the Owner; and

(ii) those costs incurred in bringing the Unit into compliance with the Governing Documents or as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, or guests (subject to the notice and hearing requirements set forth in Section 18.3).

### 8.3. Payment of Assessments.

(a) The obligation to pay Assessments for a Unit shall commence on the first day of the month following (i) the Declarant's conveyance of such Unit to a Person other than Declarant or a Declarant-approved builder; and (ii) the issuance of a certificate of occupancy for a residential building on such Unit; however, no Assessments shall be due prior to the month in which the Board first determines a budget and gives notice of the Assessment due pursuant to this Article. The first General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time (i) and (ii) above are satisfied.

(b) Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of Assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, Assessments may be paid in two or more installments. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year. If any Assessment or other charges against a Unit become delinquent, the



Board may, upon at least 10 days' written notice, require any unpaid installments of all outstanding Assessments on such Unit to be paid in full immediately.

(c) Upon written request, the Association shall furnish to any Owner liable for any type of Assessment a certificate in writing signed by an Association officer setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(d) Failure of the Board to fix Assessment amounts or rates or to deliver or mail an Assessment notice to each Owner shall not waive the Association's right to collect such Assessments retroactively or release any Owner from the obligation to pay any Assessment when levied. Each Owner shall continue to pay General Assessments on the same basis as during the last year for which an Assessment was levied, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls.

#### 8.4. Declarant's Option to Subsidize.

During the Developer Control Period, Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

#### 8.5. Personal Obligation and Lien for Assessments; Delinquencies.

(a) Personal Obligation. Except as otherwise provided in this Section, each Owner, by accepting a deed or entering into a recorded contract of sale for any Unit, agrees to pay the Assessments authorized in this Declaration. No Owner may exempt himself or herself from liability for Assessments by non-use of the Common Area, abandonment of his or her Unit, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No reduction or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or the Board to take some action or perform some function required of it, or for inconvenience arising from the making of repairs or improvements, or otherwise as a result of any action or inaction by the Association.

All Assessments, together with:

- (i) interest computed from the due date of each Assessment at a rate of 12% per annum (or the maximum rate permitted by Georgia law if less than 12% per annum);
- (ii) late charges in such amount as the Board may establish by resolution (subject to the limitations of Georgia law); and
- (iii) costs of collection (including reasonable attorneys' fees, regardless of whether suit is filed);

shall be the personal obligation of the Person who is the Owner of the Unit at the time the Assessment is due. Upon a transfer of title to a Unit, the new Owner shall be jointly and severally liable with the former Owner for any Assessments and other charges due at the time of conveyance (*i.e.*, both are responsible and either may be required to pay the full amount due to the Association), unless the new Owner took title following foreclosure of a Mortgage which has priority over the Association's lien under subsection (b) below.

(b) Lien for Assessments. The Association shall have a lien against each Unit to secure payment of all delinquent Assessments, as well as interest, late charges (subject to the limitations of Georgia law), costs of collection (including attorneys' fees), and any other charges authorized in Section 8.5(a). Such lien shall be perpetual upon the recordation of this Declaration in the Public Records. Such lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, Assessments, and other levies which by law would be superior; and (ii) the lien or charge of any first Mortgage recorded in the Public Records which was made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Association may bid for the Unit at the foreclosure sale and thereafter hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no Assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual Assessment, its pro rata share of the Assessment that would have been charged such Unit had it not been acquired by the Association.

The Association may sue for unpaid Assessments and other charges authorized hereunder without foreclosing or waiving its lien.

The sale or transfer of any Unit shall not affect the Association's lien or relieve such Unit from the lien securing any subsequent Assessments. However, the sale or transfer of any Unit pursuant to the foreclosure of a first Mortgage shall extinguish the lien as to any installments of such Assessments due prior to the Mortgagee's foreclosure. Uncollected Assessments shall be deemed Common Expenses collectible from Owners of all Units subject to Assessment under Section 8.3, including such acquirer, its successors and assigns. The subsequent Owner of the foreclosed Unit who obtains title to a Unit pursuant to the foreclosure of a first Mortgage shall not be personally liable for Assessments due prior to such acquisition of title. Such unpaid Assessments shall be deemed to be Common Expenses which the Association may thereafter allocate among all Owners as part of the General Assessment under Section 8.2(a).

Each Owner, by accepting a deed to any Unit, consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association.

#### 8.6. Exempt Property.

The following property shall be exempt from payment of General Assessments and Special Assessments:

- (a) all Common Area; and
- (b) any property dedicated to and accepted by any governmental authority or public utility.

- (c) any property which does not have a completed dwelling constructed thereon.

#### **PART FOUR: COMMON AREA**

#### **Article IX Acceptance, Management, and Control of Common Area.**

##### **9.1. Control of Common Area.**

The Association, acting through its Board, may acquire, hold, and dispose of real property (*i.e.*, land and improvements to the land and interests in land) and personal property (for example, furnishings, equipment, and other items which are not attached to land), subject to the limitations set forth in this Declaration. Any such property shall be Common Area during such period as it is held by the Association and shall cease to be Common Area upon transfer or conveyance of the Association's interest in the property. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for management, operation, and control of the Common Area.

##### **9.2. Acceptance of Common Area Conveyed by Declarant.**

The Declarant and its designees may convey to the Association real and personal property, including easements, leaseholds, and other interests in property. Such property shall be accepted by the Association "as is" and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

##### **9.3. Reconveyance of Common Area to Declarant**

Upon request of the Declarant, the Association shall reconvey to the Declarant any unimproved property or interests therein which the Declarant originally conveyed at no cost to the Association, to the extent conveyed by the Declarant in error or needed by the Declarant to make minor adjustments in property lines or to accommodate public or quasi-public facilities. The Declarant shall not be required to pay for such property, but shall pay the costs of preparing and recording the deed to cause such reconveyance.

#### **Article X Rights to Use Common Area**

##### **10.1. Easement in Common Area.**

Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) the Governing Documents, any other applicable covenants, and any other instrument affecting title to the property;
- (b) any restrictions or limitations contained in any deed or other document conveying an interest in such property to the Association;

(c) the right of the Board and the membership to adopt, amend, and repeal rules regulating the use and enjoyment of the Common Area;

(d) the right of the Association, acting through the Board, to dedicate, transfer, or grant easements over all or any part of the Common Area, subject to such approval requirements as may be set forth elsewhere in this Declaration, except that any transfer or encumbrance of Common Area shall be subject to an easement over such Common Area for access to all Units served thereby; and

(e) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

#### 10.2. Assignment of Rights to Use Common Area.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, occupants of the Owner's Unit under any lease authorized pursuant to this Declaration, and guests, subject to reasonable regulation by the Board. The Owner of a Unit which is rented under a lease authorized pursuant to this Declaration shall be deemed to have assigned to the tenant all of such Owner's rights to use facilities on the Common Area for the term of the lease.

### Article XI **Changes in Common Area**

#### 11.1. Common Area to Remain Undivided.

Except as permitted in this Declaration, ownership of the Common Area shall remain undivided. No Person shall seek to have a court partition or divide the ownership interest of all or any portion of the Common Area unless the portion of the Common Area which is the subject of such action has been removed from the provisions of this Declaration or unless all Owners and Mortgagees have consented in writing. This Section shall not apply to any property which was formerly Common Area once the Association no longer holds any legal interest in such property. Moreover, this Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

#### 11.2. Conveyance or Dedication of Common Area.

(a) The Association, acting through the Board without a vote of the membership, may grant licenses and leases of portions of the Common Area, and may grant easements over the Common Area for installation and maintenance of utilities or drainage facilities or for other purposes, to the extent not inconsistent with the intended use of the Common Area.

(b) Except as provided in Sections 9.3 and 11.2(a), the Association shall not mortgage or convey any real property comprising all or any portion of the Common Area without the approval of Owners representing at least 67% of the total Class "A" votes in the Association and the written consent of the Class "B" Member, if such exists.

(c) The Association may dedicate portions of the Common Area to Gwinnett County, Georgia, or to any other local, state, or federal governmental or quasi-governmental entity, subject to such approval as may be required by Sections 11.2(b) and 16.7.

#### 11.3. Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 12.1) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking, Declarant, so long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 12.1, and Members representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.4 regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

#### 11.4. Improvements to Common Area.

During the Developer Control Period, the Association shall not incur any Common Expenses for development or construction of capital improvements to the Common Area unless approved by Persons entitled to cast a majority of the total Class "A" votes in the Association.

### **PART FIVE: DEVELOPMENT OF THE COMMUNITY**

#### **Article XII Expansion of the Community**

##### 12.1. Expansion by Declarant.

Declarant reserves the right to expand the Community to include all or any portion of the real property described in Exhibit "B." Such right shall expire seven years after the date on which this Declaration is recorded in the Public Records. Declarant may assign this right to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such assignment shall be in writing, signed by the Declarant, and recorded in the Public Records.

Expansion of the Community shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being added to the Community. Such Supplemental Declaration shall not require the approval of Members, but shall require the consent of the owner of such property, if other than Declarant.

Nothing in this Declaration shall be construed to require Declarant or any successor to expand the Community or develop any of the property described in Exhibit "B" in any manner whatsoever.

#### 12.2. Expansion by the Association.

The Association may expand the Community to include additional real property with the consent of the owner of such property, the approval of Owners entitled to cast a majority of the Class "A" votes represented at a meeting called for such purpose, and the consent of Declarant so long as Declarant has any rights under Section 12.1.

Such expansion shall be accomplished by filing in the Public Records a Supplemental Declaration describing the property being added to the Community. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, by the owner of such property, and by Declarant, if Declarant's consent is required.

#### 12.3. Additional Covenants and Easements.

Declarant may impose additional covenants, restrictions, and easements on any property in the Community by filing a Supplemental Declaration in the Public Records setting forth such additional covenants, restrictions, and easements. Any such Supplemental Declaration shall require the written consent of the owner(s) of the property upon which the additional provisions are being imposed, if other than Declarant. Any Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

### **Article XIII Additional Rights Reserved to Declarant**

#### 13.1. Withdrawal of Property.

Declarant reserves the right to amend this Declaration, so long as it has a right to expand the Community pursuant to Section 12.1, for the purpose of removing any portion of the property in the Community which is not then improved with dwellings from the coverage of this Declaration. Such an amendment shall not require the consent of any Person other than the Owner of the property to be removed.

#### 13.2. Marketing and Sales Activities.

Declarant and builders authorized by Declarant may construct and maintain upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and authorized builders shall have easements for access to and use of such facilities.