

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR VILLAGE STACKS**

**2020181699** DEED BOOK **28908** Pg **704**



Filed and Recorded:  
**12/17/2020 3:12:42 PM**  
Debra DeBerry  
Clerk of Superior Court  
DeKalb County, Georgia

**TABLE OF CONTENTS**

	<u>Page</u>
Article 1. DEFINITIONS .....	1
Article 2. PROPERTY SUBJECT TO THIS DECLARATION; CONVEYANCE AND PARTITION OF COMMON PROPERTY .....	4
2.1 Property Hereby Subjected to this Declaration .....	4
2.2 Other Property.....	4
2.3 Conveyance of Common Property by Declarant to Association.....	
2.4 Partition of Common Property .....	
Article 3. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS .....	
3.1 Membership .....	
3.2 Voting .....	
Article 4. ASSOCIATION RIGHTS AND RESTRICTIONS, VARIANCES .....	
4.1 Association Rights and Restrictions.....	
4.2 Variances	
Article 5. ASSESSMENTS .....	
5.1 Purpose of Assessment	
5.2 Creation of the Lien and Personal Obligation for Assessments .....	
5.3 Computation of Annual Assessment.....	
5.4 Special Assessments .....	
5.5 Lien for Assessments .....	
5.6 Effect of Nonpayment of Assessments; Remedies of the Association.....	
5.7 Date of Commencement of Assessments .....	
5.8 Specific Assessments .....	
5.9 Budget Deficits During Declarant Control.....	
5.10 Capital Reserve Budget and Contribution.....	
5.11 Initial Fee .....	
5.12 Statement of Account.....	
Article 6. INSURANCE AND CASUALTY LOSSES .....	
6.1 Insurance on Common Property.....	
6.2 Liability Insurance .....	
6.3 Premiums and Deductible on Association Policies .....	
6.4 Policy Terms .....	
6.5 Additional Association Insurance .....	
6.6 Insurance Deductibles .....	
6.7 Insurance Rates .....	
6.8 Individual Insurance.....	
6.9 Repair and Reconstruction After Casualty Damage.....	
Article 7. CONDEMNATION .....	
Article 8. ARCHITECTURAL CONTROLS .....	
8.1 During Declarant Control.....	
8.2 After Declarant Control .....	
8.3 Alterations to the Interior of a Townhome.....	
8.4 Condition of Approval .....	
8.5 Limitation of Liability.....	
8.6 No Waiver of Future Approvals.....	
8.7 Enforcement.....	

8.8 Commencement of Construction.....

8.9 Approval of Builders, Landscapers and Architects.....

Article 9. USE RESTRICTIONS .....

9.1 General.....

9.2 Residential Use .....

9.3 Number of Occupants .....

9.4 Use of Common Property .....

9.5 Occupants Bound.....

9.6 Signs.....

9.7 Vehicles and Parking .....

9.8 Garages .....

9.9 Garage Sales.....

9.10 Animals and Pets.....

9.11 Prohibition of Damage, Nuisance and Noise .....

9.12 Unsightly or Unkempt Conditions .....

9.13 Window Treatments.....

9.14 Air Conditioning Units.....

9.15 Antennas and Satellite Dishes.....

9.16 Fences .....

9.17 Recreational Areas .....

9.18 Rubbish, Trash, and Garbage Disposal .....

9.19 Subdivision of Lot.....

9.20 Outbuildings.....

9.21 Tree Removal.....

9.22 Firearms and Fireworks .....

9.23 Heating of Townhomes in Colder Months.....

9.24 Abandoned Personal Property.....

9.25 Impairment of Townhomes and Easements .....

9.26 Lighting.....

9.27 Mailboxes.....

9.28 Patios and Landings .....

9.29 Grilling.....

Article 10. LEASING .....

10.1 Purpose.....

10.2 Leasing Provisions .....

10.3 Applicability of Article 10 .....

Article 11 TRANSFER OR SALE OF LOTS.....

Article 12 MAINTENANCE .....

12.1 Association’s Responsibility.....

12.2 Owner’s Responsibility.....

12.3 Failure to Maintain.....

12.4 Measures Related to Insurance Coverage .....

12.5 Maintenance Standards and Interpretation .....

12.6 Mold and/or Mildew .....

Article 13. PARTY WALLS AND FENCES .....

13.1 General Rules of Law to Apply .....

13.2 Sharing of Repair and Maintenance.....

13.3 Damage and Destruction .....

13.4 Right to Contribution Runs with Land.....

Article 14. MORTGAGEE PROVISIONS .....  
 14.1 Notices of Action .....  
 14.2 Approval of Action .....  
 14.3 No Priority .....  
 14.4 Notice to Association .....  
 14.5 Amendments by Board.....  
 14.6 VA/HUD Approval.....  
 14.7 Applicability of this Article .....  
 14.8 Failure of Mortgagee to Respond.....

Article 15. EASEMENTS .....  
 15.1 Easements for Encroachment and Overhang .....  
 15.2 Easements for Use and Enjoyment .....  
 15.3 Easements for Street Lights and Utilities .....  
 15.4 Easement for Entry .....  
 15.5 Easement for Association Maintenance .....  
 15.6 Easements for Entry Features and Street Signs.....  
 15.7 Easement for Access, Ingress, and Egress .....  
 15.8 Public in General.....

Article 16. GENERAL PROVISIONS.....  
 16.1 Amendment.....  
 16.2 Duration .....  
 16.3 Security .....  
 16.4 Dispute Resolution.....  
 16.5 No Discrimination.....  
 16.6 Indemnification.....  
 16.7 Implied Rights.....  
 16.8 Perpetuities.....  
 16.9 Severability .....  
 16.10 Agreements .....  
 16.11 Disclosures.....  
 16.12 Captions .....  
 16.13 Gender and Grammar.....

Article 17. WITHDRAWAL OF PROPERTY; ADDITIONAL COMMON PROPERTY .....  
 17.1 Withdrawal of Property.....  
 17.2 Acquisition of Additional Common Property .....

Article 18. DECLARANT’S RIGHTS.....  
 18.1 Transfer of Declarant’s Rights .....  
 18.2 Construction and Sale Period.....

**Table of Exhibits**

Description of Property Submitted..... “A”  
 Bylaws of Village Stacks Homeowners Association, Inc..... “B”

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

**VILLAGE STACKS**

THIS DECLARATION is made on the date set forth below by May Avenue Development, LLC, a Georgia limited liability company (“Declarant”);

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real property described in Paragraph 2.1 of this Declaration (the “Property”); and

WHEREAS, Declarant desires to subject the Property to the provisions of this Declaration to create a residential community of attached townhomes and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant declares that the Property, including the improvements constructed or to be constructed thereon, is subjected to the provisions of this Declaration, and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property, and shall be binding on all persons having any right, title, or interest in all or any portion of the Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns, and shall be for the benefit of all owners of the Property.

**ARTICLE 1.**

**Definitions**

The following words, when used in this Declaration or in any Supplementary Declaration (unless the context shall prohibit), shall have the following meanings:

(a) “Architectural Review Committee” or “ARC” shall mean the committee established to exercise the architectural review powers set forth in Article 8 hereof, which shall be the Board of Directors of the Association, unless by resolution the Board appoints a separate Architectural Review Committee.

(b) “Area of Common Responsibility” shall mean the Common Property, together with those areas, if any, which by the terms of this Declaration or by agreement with any other Person become the Association’s responsibility to maintain.

(c) “Articles” or “Articles of Incorporation” mean the Articles of Incorporation of Village Stacks Homeowners Association, Inc., which has been filed with the Secretary of State of the State of Georgia.

(d) “Association” shall mean Village Stacks Homeowners Association, Inc., a Georgia non-profit corporation, its successors and assigns.

---

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

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

(e) “Board” or “Board of Directors” shall mean the appointed or elected body of the Association, as applicable, having its normal meaning under Georgia corporate law.

(f) “Bylaws” shall mean the Bylaws of Village Stacks Homeowners Association, Inc., attached to this Declaration as Exhibit “B” and incorporated herein by this reference.

(g) “Common Expenses” shall mean the expenses incurred or anticipated to be incurred by the Association for the general benefit of the Community, including, but not limited to, the costs of the common water and sewer bills, stormwater management facilities, and those expenses incurred for maintaining, repairing, replacing, and operating the Common Property and Area of Common Responsibility, or under any utility or other easement agreements recorded in DeKalb County, Georgia records which burdens or benefits the Community.

(h) “Common Property” shall mean any and all real and personal property and easements and other interests, together with the facilities and improvements located on the Community, now or in the future owned by the Association, including but not limited to, all landscape and grassy areas not included in a Lot, all alleys, roads and road medians/islands, sidewalks and other concrete and paved areas not included in a Lot, entrance features of signage, stormwater management facilities, all amenities, and all personal property of the Association in any of these areas.

(i) “Community” shall mean and refer to that certain real property and interests therein described in Exhibit “A” attached hereto and incorporated herein by this reference, and such additions hereto as may be made by Declarant or the Association by Supplementary Declaration of other real property.

(j) “Community-Wide Standard” shall mean the standard of conduct, maintenance, or other activity generally prevailing on the Community. Such standard may be more specifically determined by the Board and the ARC. This determination however, must be consistent with the Community-Wide Standard originally established by Declarant.

(k) “Declarant” shall mean and refer to May Avenue Development, LLC, a Georgia limited liability company, and such of its successors-in-title who shall (i) acquire, from a predecessor “Declarant,” for the purpose of development or sale, all or any portion of the real property described in Exhibit “A” hereto; and (ii) be designated as the “Declarant” in the deed of transfer by which such successor-in-title shall so acquire its interest in such real property, or by written assignment of Declarant’s rights in an instrument recorded in the DeKalb County, Georgia records. In all events there shall only be one (1) “Declarant” at any one time; in no event shall more than one (1) Person have the right to exercise the power and authority of the “Declarant” at any one time.

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

(m) “Effective Date” shall mean the date that this Declaration is recorded in the DeKalb County, Georgia land records.

(n) “Electronic Document” shall mean information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form.

(o) “Electronic Signature” shall mean a signature created, transmitted, received, or stored by electronic means, and includes but is not limited to a Secure Electronic Signature.

(p) “Eligible Mortgage Holder” shall mean a holder of a first Mortgage secured by a Lot, who has requested, in writing, notice of certain items under Article 14 hereof.

(q) “Governing Documents” shall mean this Declaration and all exhibits hereto, including the Bylaws, Articles of Incorporation, the Survey and any architectural standards and rules and regulations of the Association, all as may be supplemented or amended from time to time.

(r) “Lot” shall mean a portion of the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family residence site as shown on the Survey. Each Lot consists of a Lot and all improvements thereon, including but not limited to a residence.

(s) “Majority” shall mean those eligible votes, Members, or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

(t) “Member” shall mean any Person who owns any portion of any real property in the Community, but shall not mean the Association or a Mortgage Holder. For purposes hereof, the holder of a tax deed on any portion of the Community shall be deemed a Member, notwithstanding the fact that there may exist a right of redemption on such Lot.

(u) “Mortgage” shall mean any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(v) “Mortgagee” or “Mortgage Holder” shall mean the holder of a Mortgage.

(w) “Occupant” shall mean any Person occupying all or any portion of a Lot for more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year, regardless of whether such Person is a tenant or the Owner of such property.

(x) “Officer” shall mean an individual who is elected by the Board to serve as President, Vice President, Secretary, or Treasurer, or such other subordinate officers as the Board may determine necessary.

(y) “Owner” shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located on the Community; excluding, however, any Person holding such interest merely as security for the performance of satisfaction of any obligation.

(z) “Person” shall mean any natural person, as well as a corporation, limited liability company, joint venture, partnership (general or limited), association, trust, or other legal entity.

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

(bb) “Supplementary Declaration” shall mean an amendment or supplement to this Declaration that subjects additional property to this Declaration, or imposes additional restrictions and obligations on the Property, or both.

(cc) “Survey” shall mean the plat or plats for Village Stacks, as amended, recorded in DeKalb County, Georgia records. The Survey is incorporated herein by reference as fully as if the same were set forth in its entirety herein.

(dd) “Total Association Vote” shall mean all of the votes attributable to Members of the Association (including votes of Declarant), and the consent of Declarant, so long as Declarant owns any property for development and/or sale in the Community.

(ee) "Townhome" shall mean any building situated on a Lot that is designed and intended for use and occupancy as a single-family residential home.

## ARTICLE 2.

### **Property Subject to this Declaration; Conveyance and Partition of Common Property**

2.1. Property Hereby Subjected to this Declaration. The real property described in Exhibit "A" attached hereto and by this reference made a part hereof is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration.

2.2. Other Property. Only the real property described in Paragraph 2.1 is made subject to this Declaration.

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

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

## ARTICLE 3.

### **Association Membership and Voting Rights**

3.1. Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall automatically be a Member of the Association upon taking title to a Lot, and shall remain a Member for the entire period of ownership. The foregoing 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 (1) or more Persons, shall have more than one (1) membership per Lot. 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 for each Lot owned.

3.2. Voting. 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 themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it.

## ARTICLE 4.

### **Association Rights and Restrictions; Variances**

4.1. Association Rights and Restrictions. 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 Community, 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, and suspending use and voting privileges and services paid for as a Common Expense, as provided herein. These powers, however, shall not limit any other legal means of enforcing the use restrictions or Association rules and regulations by either the Association or, in any case, by an aggrieved Owner;

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

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

(e) to represent and act on behalf of the Association 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 any portion of the Common Property (excluding (i) any portion of the Common Property, the use of which is reasonably necessary for access to or from a Lot; or (ii) any portion of the Common Property over, on, upon or which Declarant has an easement, with thirty (30) days prior notice to all Owners, except that, in emergency situations requiring a temporary closing, prior notice shall not be required, so long as notice is given within three (3) days after the closing explaining the reason for the closing. Notwithstanding the above, the Owners may re-open the closed Common Property by a Majority of the Total Association Vote, cast at a duly called special or annual meeting;

(h) to enter into Lots for maintenance, emergency, security, or safety purposes, or otherwise to discharge its powers or responsibilities hereunder, which right may be exercised by the Association's Board of Directors, Officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot. For purposes of this paragraph, an emergency justifying immediate entry into a Lot shall include, but not be limited to the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation, or sounds indicating that a person or animal might be injured or sick and require immediate medical attention. No one exercising the rights granted in this subparagraph shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a Lot shall exist;

(i) to acquire, lease, hold, and dispose of tangible and intangible personal property and real property; and

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

## ARTICLE 5.

### Assessments

5.1. Purpose of Assessment. The Association shall have the power to levy assessments as provided herein. The assessments of 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 in the Community, as may be more specifically authorized from time to time by the Board.

5.2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration; including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest (not to exceed the maximum rate permitted by law) per annum on the principal amount due; and costs, including, without limitation, reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, and costs, including, without limitation, reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

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

5.3. Computation of Annual Assessment. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, and, if necessary, a capital contribution or reserve in accordance with a capital budget separately prepared. The common assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total budgeted operating costs of the Association. The Board shall cause the proposed budget and assessments to be levied against each Lot for the following year to be delivered to each Member at least thirty (30) days prior to the end of the current fiscal year (or at least thirty (30) days prior to the due date of the first installment in the case of the initial budget). The budget and the assessment shall become effective unless disapproved at a meeting by a Majority of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget, or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

5.4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any special assessment which would cause the average total of special assessments levied in one (1) fiscal year to exceed Five Hundred Dollars (\$500.00) per Lot shall be approved by a Majority of the Total Association Vote prior to becoming effective. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. Notwithstanding anything to the contrary stated herein, for so long as Declarant owns any property for development and/or sale in the Community, any proposed special assessment by the Association shall also require the approval of Declarant.

5.5. Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, and costs, including, without limitation, reasonable attorney's fees actually incurred as provided herein, shall be secured by a lien on such Lot in favor of the Association, and the Association shall be entitled to file such a lien in the land records of DeKalb County, Georgia. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes and (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of DeKalb County, Georgia, and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

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

5.6. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine, which shall not exceed ten percent (10%) of the assessment payment. The Association shall cause a notice of delinquency to be given to any Member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include interest, at a rate of twelve percent (12%) per annum, on the principal amount due from the date first due and payable, all late charges, all costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same. In addition to the other remedies provided herein, the Association shall have the right to suspend the voting rights of an Owner for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid.

In the event that any assessment or other charge is delinquent for sixty (60) days, and the amount owed is in excess of the dollar amount equal to three (3) times the monthly assessment owed by an Owner, then, in addition to all other rights provided herein, upon no less than ten (10) days' written notice, the Association shall have the right to suspend any utility or services to the Lot paid for as a Common Expense by the Association. Any costs incurred by the Association in discontinuing and/or reconnecting any utility or service, including reasonable attorney's fees actually incurred, shall be an assessment against the Lot. The utility or service shall not be required to be restored until all sums owed to the Association are paid in full, at which time the Association shall make arrangements for restoration of the utility or service. An Owner whose utility or service has been suspended hereunder shall not be entitled to use any such utility or service from any source, and any such unauthorized use shall be considered a theft of services under O.C.G.A. § 16-8-5.

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

All payments shall be applied first to costs and reasonable attorney's fees actually incurred, then to late charges, then to interest and then to delinquent assessments.

5.7. Date of Commencement of Assessments.

(a) Assessments shall commence as to a Lot on the day on which such Lot is conveyed to a Person other than Declarant. Declarant shall not be responsible for the payment of any type of assessment; provided, however, assessments shall commence on Lots containing occupied Townhomes that are owned by Declarant on the first day of the month following the occupancy of the Townhome. The first assessment shall be adjusted according to the number of months then remaining in that fiscal year. Subsequent assessments shall be due and payable on the first business day of the Association's fiscal year, unless provided otherwise by the Board of Directors.

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

5.8. Specific Assessments. The Board shall have the power to specifically assess pursuant to this paragraph as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this paragraph shall not be grounds for any action against the Association or the Board of Directors, and shall not constitute a waiver of the Board's right to exercise its authority under this paragraph in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this paragraph. Fines levied pursuant to Article 5 of the Bylaws, and the costs of maintenance performed by the Association for which the Owner is responsible for under Article 12 of this Declaration, shall be specific assessments. The Board may also specifically assess Owners for the following Association expenses:

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

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

5.9. Budget Deficits During Declarant Control. For so long as Declarant owns any property for development and/or sale in the Community, Declarant may, but shall not be obligated to, reduce the assessment for any fiscal year by paying a subsidy on such terms and under such circumstances as Declarant in its sole discretion may decide. However, any Declarant subsidy shall be conspicuously disclosed as a line item in the income portion of the Common Expense budget. If Declarant elects to pay a subsidy, the amount of the subsidy shown on the budget shall be an estimate only, and Declarant shall be obligated to fund such subsidy only to the extent of any operating deficit, if any, between the actual operating expenses of the Association and the sum of annual assessments, common assessments, special assessments, and specific assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in any assessment year. The payment of a subsidy in one (1) year shall under no circumstances obligate Declarant to continue payment of a subsidy in future years; provided, however, Declarant shall be responsible for assessments to the extent required by Paragraph 5.8. Declarant, in its sole discretion, may choose to characterize all such subsidized amounts expended to offset any actual operating deficit of the Association as loans to the Association, which, at Declarant's request, shall be evidenced by a promissory note(s) from the Association to Declarant. Such promissory note(s), if any, shall be due and payable upon demand, with interest at the rate of ten percent (10%) per annum after demand, unless otherwise negotiated and agreed to by the Association and Declarant.

Declarant's option to subsidize the assessment may be in the form of cash, or by "in kind" contributions of services or materials, or a combination of these. The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If Declarant or its affiliate, as the case may be, and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and Declarant or its affiliate, as the case may be, cannot agree as to the value of any contribution, Declarant or its affiliate, as the case may be, shall supply the Association with a detailed explanation of the services performed and materials furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors, approved by Declarant or its affiliate, as the case may be, who are in the business of providing such services and materials. If the Association and Declarant or its affiliate, as the case may be, are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

5.10. Capital Reserve Budget and Contribution. The Board of Directors shall annually prepare a capital reserve budget that shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital reserve contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital reserve budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The annual capital reserve contribution required, if any, shall be fixed by the Board and included within the budget

and assessment as provided in Paragraph 5.4 hereof. A copy of the capital reserve budget shall be distributed to each Member in the same manner as the operating budget.

5.11. Initiation Fee. The purchaser of each Lot, at the closing of the sale or resale of a Lot, shall pay to the Association an initiation fee in the amount of One Thousand and No/100 Dollars (\$1000.00). In the event such initiation fee is not paid in accordance with this paragraph, such amount shall be a specific assessment against such Lot. The initiation fee shall not be deemed an advance payment of regular or special assessments. The Board shall have discretion to increase the initiation fee by resolution of the Board; provided, however, the initiation fee shall not be changed by the Board without Declarant's consent during the Declarant Control Period. Notwithstanding anything to the contrary herein, no initiation fee shall be due from (i) any grantee who is the Domestic Partner, spouse or former spouse of the grantor; (ii) any grantee that is a wholly-owned entity of the grantor; (iii) any grantee to whom a Lot is conveyed by a will or through the law of intestacy; or (iv) any grantee of a Lot who obtains title pursuant to judicial or nonjudicial foreclosure of any first Mortgage of record or secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Lot). This initiation fee shall be an assessment, which is the personal obligation of the Owner, and shall constitute a lien, which may be collected as provided in this paragraph.

5.12. Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid; including any late charges, interest, fines, or other charges against a 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 Dollars (\$10.00) or such higher amount as may be determined by the Board of Directors, 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.

## ARTICLE 6.

### Insurance and Casualty Losses

6.1. Insurance on Common Property. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and, at the option of the Board of Directors, shall have the authority, but not the obligation, to obtain insurance for the residences and other improvements on Lots. 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.

6.2. 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. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00).

6.3. 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 deductible amount shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

6.4. Policy Terms. All insurance coverage obtained by the Board shall be written in the name of the Association, as trustee, for the respective benefited parties, as further identified in subparagraph (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in Georgia.

(b) All policies on the Common Property shall be for the benefit of the Association and its Members.

(c) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations, if any, related thereto.

(d) 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.

(e) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if these are reasonably available, and all insurance policies shall be reviewed annually by one (1) or more qualified persons, at least one (1) of whom must be in the real estate industry and familiar with construction in the county where the Community is located.

(f) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Board, its manager, the Members and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) a provision that no policy may be canceled, invalidated, or suspended on account of any one or more individual Members;

(iv) a provision that no policy may be canceled, invalidated, suspended, or subjected to non-renewal on account of any default or the conduct of any director, Officer, or employee of the Association or its duly authorized manager, without prior demand, in writing, delivered to the Association, to cure the default or to cease the conduct, and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Member or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Members' policies from consideration; and

(vi) that no policy may be canceled or substantially modified or subjected to non-renewal without at least thirty (30) days' prior written notice to the Association.

6.5. Additional Association Insurance. In addition to the other insurance on the Common Property, the Board shall obtain directors' and officers' liability coverage, worker's compensation insurance (if and to the extent necessary to satisfy the requirements of applicable laws), and a fidelity bond or bonds on directors, Officers, employees, and other Persons handling or responsible for the Association's funds, or dishonesty insurance. The amount of fidelity coverage or dishonesty insurance shall be determined in the directors' best business judgment, but if reasonably available, shall not be less than one-fourth (1/4) of the annual assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on financial controls which take one (1) or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls, and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services, and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two (2) Board members must sign any checks written on the reserve account. Bonds shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation, and may not be canceled, substantially modified, or subjected to non-renewal without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage

Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs ("VA"), or the U.S. Department of Housing and Urban Development ("HUD").

6.6. 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 any owner of any Lot fails to pay the deductible when required hereunder, then the Association can pay the deductible and assess the cost to the Owner(s) pursuant to Paragraph 5.8 hereof.

6.7. Insurance Rates. Nothing shall be done or kept in the Community that will increase the rate of insurance on any portion of the Community insured by the Association, or that would be in violation of the law. No Owner, Occupant or guest shall keep any explosive or flammable materials.

6.8. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" property insurance on its Lot and structures constructed thereon, providing full replacement cost coverage (less a reasonable deductible), unless the Association carries such insurance (which they are not obligated to do hereunder). If reasonably available, the casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, including 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. If all-risk coverage is not reasonably available, Owner shall obtain, at a minimum, fire and extended coverage on his or her Lot and structures constructed thereon, including, but not limited to, a Townhome, meeting the same requirements as set forth in Paragraph 6.4 hereof for insurance on the Common Property. The deductible amount per occurrence for coverage obtained by an Owner shall not exceed Five Thousand Dollars (\$5,000.00). The policies required hereunder shall be in effect at all times. Upon request by the Association, an Owner shall furnish a copy of his/her insurance policy or policies to the Board. In the event that any Owner fails to obtain and maintain insurance, as required by this paragraph, the Association may purchase such insurance on behalf of the Owner, and specifically assess the cost thereof to the Owner pursuant to Paragraph 5.8 hereof, to be collected in the manner provided for collection of Common Expenses under this Declaration.

Each Owner further covenants and agrees that in the event of damage and destruction of structures located on his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structures in a manner consistent with the original construction, or such other plans and specifications as are approved in accordance with this Declaration. The Owner shall pay any costs of repair or reconstruction that is not covered by insurance proceeds.

6.9. Repair and Reconstruction after Casualty Damage. In the event of damage to or destruction of all or any part of the Common Property as a result of fire or other casualty, unless Declarant and eighty percent (80%) of the Owners vote not to proceed with the reconstruction and repair of the structures, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structures. In the event of substantial damage or destruction, each institutional holder of a first Mortgage on the Common Property, if any, shall be entitled to written notice of the damage.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to the Common 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 as the Board determines to be necessary.

(b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Owners without the necessity of a vote of the Members or compliance with Paragraph 5.4 above. If, after repair and reconstruction is completed, there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Common Property was originally constructed, except where changes are necessary to comply with current applicable building code. To the extent insurance proceeds are available, the Association may reconstruct or repair additional improvements to the Common Property damaged as a result of fire or other casualty.

(d) Encroachments. Encroachments upon or in favor of Lots that may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the owner of the Lot upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Common Property was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(e) Construction Fund. The net proceeds of the insurance collected on account of a casualty, and the funds collected by the Association from assessments against Lots on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this paragraph, to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), owners and/or personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board.

## ARTICLE 7.

### Condemnation

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless Owners holding at least eighty percent (80%) of the Total Association Vote other than Declarant, and Declarant otherwise agree within sixty (60) days after the taking, the Association shall restore or replace the improvements taken on the remaining land included in the Common Property to the extent lands are available. Declarant's vote is required hereunder for so long as Declarant owns any property for development and/or sale in the Community. The provisions of Paragraph 6.9 above, applicable to Common Property improvements damage, shall govern replacement or restoration, and the actions to be taken in the event that the improvements are not restored or replaced.

## ARTICLE 8.

### Architectural Controls

8.1. During Declarant Control. During the time in which Townhomes are being constructed on Lots located in the Community, and all Lots have not been sold and closed to a Person other than Declarant (unless occupied), there shall be no Architectural Control Committee ("ARC"), and all encroachments onto the Common Property and any exterior change, alteration or construction on a Lot (including painting, regrading, altering or replacing any mailbox, if any, and making landscaping modifications), and any erection, placement or posting of any object, sign, clothesline, playground equipment, light, storm door or window, artificial vegetation, exterior sculpture, fountains, flags or thing on the exterior of any Lot, on a Townhome located on a Lot, in any windows of the Townhome (except window treatments as provided herein), must receive the prior written approval of Declarant. Granting or withholding such approval shall be within the sole discretion of Declarant. Notwithstanding anything to the contrary stated herein, the initial improvements constructed in the Community, and all architectural modifications thereto that are made by Declarant shall not be subject to approval pursuant to this Article.

8.2. After Declarant Control. After such time as the Townhomes have been constructed on Lots located in the Community, and all Lots have been sold and closed to a Person other than Declarant (unless occupied), an Architectural Review Committee shall be appointed by the Board of Directors, which shall consist of the Board, unless the Board delegates to other Persons the authority to serve on the ARC. Except for Declarant, no Owner, Occupant, or any other Person may make any encroachment onto the Common Property, or make any exterior change, addition, alteration, or construction (including painting, regrading, altering or replacing any mailbox, if any, and making landscaping modifications), or erect, place or post any object, sign, clothesline, playground equipment, light, storm door or window, artificial vegetation, exterior sculpture, fountains, flags or thing



on the exterior of any Lot, on a Townhome located on a Lot, or in any windows of the Townhome (except window treatments as provided herein), without first obtaining the written approval of the ARC.

Notwithstanding anything to the contrary herein, the ARC shall have the authority to select and employ professional consultants to assist it in discharging its duties, the cost of such consultants to be paid by the Owner of any Lot for which plans and specifications have been submitted for approval. The Owner of any such Lot shall be responsible for paying the full costs of each review, whether or not submitted plans and specifications are approved by the ARC, and the ARC may require payment of all such costs prior to approval of plans and specifications. The ARC also may charge reasonable fees to cover the cost of review or inspections performed hereunder, and any such fees shall be published in the architectural standards for the Community.

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

Applications for approval of any such architectural modification shall be in writing, and shall provide such information as the ARC may reasonably require. The ARC or its designated representative (including, but not limited to the architect of the original floor plans of a Townhome) shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction which is not in conformance with approved plans. The Board or the ARC may publish written architectural standards for exterior and Common Property alterations or additions, and any request in substantial compliance therewith shall be approved; provided, however, each such requested change shall be in harmony with the external design of the existing buildings and Lots and the location in relation to surrounding structures and topography of the vicinity.

The ARC or the Board, subject to Paragraph 8.1 hereof, may allow such encroachments on the Common Property as it deems acceptable.

If the ARC or its designated representative fails to approve or to disapprove such application within forty-five (45) days after the application, and such information as the ARC may reasonably require shall have been submitted, its approval will not be required and this paragraph will be deemed complied with; provided, however, even if the requirements of this paragraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the Bylaws, the architectural standards, the Association's rules and regulations, or applicable zoning ordinances.

This Article shall not apply to the activity of Declarant, nor to constructions or improvements or modifications to the Common Property by or on behalf of the Association.

8.3. Alterations to the Interior of a Townhome. Except as provided herein, no Owner or Occupant shall make any changes, alterations, modification or construction to the interior of a Townhome that involves connecting to a pipe, line, conduit and/or other apparatus for access to common utilities, or places an excessive load on any structural or load bearing portions of a Townhome, or otherwise negatively impacts the structural integrity of the Townhome and any adjoining Townhomes, without first obtaining the prior written approval of the ARC. Such approval shall not be granted by the ARC unless the Owner has presented to the ARC a report and/or drawing prepared by a licensed structural engineer showing that compensating measures will be taken to ensure the structural integrity of the Townhome and any adjoining Townhomes. All building code requirements must be complied with, and necessary permits and approvals for the proposed change, alteration, modification or construction shall be secured by an Owner at Owner's sole expense.

8.4. 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, unless such responsibilities are assumed by the Association pursuant to a written agreement. In the discretion of the Board or the ARC, 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.

8.5. Limitation of Liability. Review and approval of any application pursuant to this Article 8 may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board nor the ARC 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 ARC, or any 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.

8.6. No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board and the ARC 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 ARC 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 ARC, 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.

8.7. Enforcement. Any construction, alteration, or other work done in violation of this Article 8, the Declaration, the Bylaws or the architectural standards, shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, remove such construction, alteration, or other work, and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorney's fees actually incurred, may be assessed against the violating Lot.

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 Article 8 and its decisions or those of the ARC. Furthermore, the Board shall have the authority to record in the DeKalb County land records notices of violation of the provisions of this Article 8.

If any Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Property in violation of this Article 8, 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.

8.8. Commencement of Construction. All improvements approved by the ARC hereunder must be commenced within six (6) months from the date of approval. If not commenced within six (6) months from the date of such approval, then such approval shall be deemed revoked by the ARC, unless the ARC gives a written extension for commencing the work. All work approved by the ARC hereunder shall be completed within ninety (90) days of commencement, unless otherwise agreed in writing by the ARC. Not less than the entire work approved by the ARC shall be performed unless otherwise agreed in writing by the ARC.

8.9. Approval of Contractors, Landscapers and Architects. Any contractor, landscaper or architect, prior to performing any work on any Lot, must first be approved by Declarant, or the ARC if there no longer is a Declarant, as to financial stability, building, landscaping or design experience and ability to build, landscape or design structures or grounds of the class and type of those which are to be built in the Community. Such approval may be granted or withheld in the sole and uncontrolled discretion of the ARC. Moreover, no Person shall be approved as a contractor, landscaper or architect unless such Person obtains his income primarily from construction, landscaping or design of the type which the contractor, landscaper or architect is to perform upon the Lot, and has provided Declarant or the ARC, as applicable, evidence of public liability insurance and worker's compensation insurance of a type and amount determined to be appropriate by Declarant or the ARC, as applicable.

## ARTICLE 9.

### Use Restrictions and Rules

9.1. General. This Article 9, beginning with Paragraph 9.2, sets out certain use restrictions that must be complied with by all Owners and Occupants of Lots. These use restrictions may only be amended in the manner provided in Paragraph 16.1 hereof, regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, adopt, modify, or delete rules and regulations applicable to the Community. These rules shall be distributed to all Owners prior to the date that they are to become effective, and after distribution shall be binding upon all Owners and Occupants of Lots until and unless overruled, canceled, or modified by Declarant, for so long as Declarant owns any property for development and/or sale in the Community, or by a Majority of the Total Association Vote, at a regular or special meeting. Notwithstanding the above, for so long as Declarant owns any property for development and/or sale in the Community, no rules and regulations which affect Declarant may be adopted, modified, or deleted without the written consent of Declarant.

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

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

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

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

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

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

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

(g) the business activity does not result in a materially greater use of Common Property facilities or Association services.

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

9.3. Number of Occupants. The maximum number of occupants in a Townhome shall be limited to two (2) people per bedroom in the Townhome. "Occupancy," for purposes hereof, shall be defined as staying overnight in a Townhome for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988, or any amendments thereto.

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

9.4. 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 without the prior written consent of the Association, except as specifically provided herein.

With the prior written approval of the Board of Directors, 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. The Board of Directors shall be permitted to charge such Owner or Owners reasonable fees, as determined in the Board's sole discretion, in connection with the reservation and use of any portion of the Common Property. Any such Owner or Owners who reserve a portion of the Common Property as provided herein 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.

9.5. Occupants Bound. All provisions of the Declaration, Bylaws and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to Occupants, even though Occupants are not specifically mentioned. The Owner shall be responsible for ensuring that an Occupant, and the guests, invitees and licensees of an Owner or Occupant, strictly comply with all provisions of the Declaration, Bylaws, and any rules and regulations adopted by the Board of Directors. Fines may be levied against Owners or Occupants. If a fine is levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.

9.6. Signs. Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected or placed by an Owner, Occupant or other Person, or permitted to remain on the Community, without the prior written consent of the Board or its designee, except that one (1) professional security sign not to exceed four inches (4") by four inches (4") in size may be displayed from within a Townhome, and one (1) professionally lettered "For Sale" sign not to exceed two feet (2') by two feet (2') in size may be displayed from within the Townhome offered for sale. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. The Board also shall have the authority to adopt regulations permitting temporary signs on Lots announcing births, birthdays or other events for limited periods of time. This Paragraph 9.6 shall not apply to Declarant.

9.7. Vehicles and Parking. Vehicles permitted under this paragraph shall be parked in areas specified herein or in designated areas authorized in writing by the Board. No Owner or Occupant may keep or bring onto the Community more than a reasonable number of vehicles per Lot at any time, as determined by the Board; provided, however, the Board may adopt reasonable rules limiting the number of vehicles that may be parked at the Community and the designated location thereof. Except as specified in Paragraph 9.8, Owners or Occupant may only park a vehicle in his or her Lots, garage or driveway. Vehicles are not permitted to be parked on any Common Property, including the common drives, streets or any landscaped area within the Community.

Disabled and stored vehicles are prohibited from being parked on the Community. For purposes of this Paragraph 9.6, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Community for fourteen (14) consecutive days or longer without being driven and without prior written Board permission.

Boats, trailers, buses, panel trucks, trucks with a load capacity of one (1) ton or more, vans (excluding mini-vans or utility vehicles used as passenger vehicles, and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), recreational vehicles (RVs and motor homes), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors other than Sheriff's, Marshall's or police officer's vehicles marked as such, are also prohibited from being parked on the Community. Notwithstanding the foregoing, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the Community during normal business hours for the purpose of serving

any Lot or the Common Property; provided, however, no such vehicle shall remain on the Lot or the Common Property overnight for any purpose unless prior written consent of the Board is first obtained.

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

If a vehicle is parked in a fire lane, is blocking another vehicle or access to a Lot, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed or booted in accordance with this paragraph, neither the Association nor any Officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. The Association's right to tow or boot is in addition to, and not in limitation of, all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

9.8. Reserved Parking. Notwithstanding anything in this Article 9 to the contrary, an Owner or Occupant of Unit 21, 22, 23 or 24 may park one vehicle in the Reserved Parking space reserved for his or her Townhome as shown on the survey of the Community to be recorded in the records of DeKalb County.

9.9. Garages. All garages shall be maintained as garages capable of holding the maximum number of vehicles for which they were designed. No garage shall be enclosed or converted to a use other than as a garage without prior approval of the ARC. No Owner or Occupant of a Lot that includes a garage shall park his or her car or other motor vehicle on any portion of the Community, other than in the garage; provided, however, if the maximum number of cars or similarly sized motor vehicles which can be parked in the garage according to its design capacity are already parked in said garage, the Owner or Occupant of a Lot may park on the driveway of such Lot. Garage doors shall remain closed at all times, except for necessary use, ingress, and egress.

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

9.11. Animals and Pets. No Owner or Occupant may keep any animals on any portion of the Community except as expressly permitted in this subparagraph. An Owner or Occupant shall keep no more than two (2) dogs and/or cats (for a combined total of two (2) per Lot), and a reasonable number of other generally recognized household pets, as determined in the Board of Director's sole discretion, weighing less than two (2) pounds each (including by way of illustration, but not limitation, fish, gerbils and small birds). No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose, and no structure for the care, housing, or confinement of any pet, such as dog houses and dog runs, shall be constructed or maintained on part of the Community without prior written ARC approval. No pets are allowed on any portion of the Common Property except for the designated dog walk area, if any. Notwithstanding the foregoing, pets must be kept on a leash and be under the physical control of a responsible person at all times when on the Common Property and on the Lot of another Owner. Feces left by pets upon the Common Property must be immediately removed by the owner of the pet or the person responsible for the pet.

No potbellied pigs, snakes, or other animals determined in the Board's sole discretion to be dangerous may be brought onto or kept on the Community at any time. Furthermore, any pet that is permitted to roam free, or, in the Board's sole discretion, endangers the health of any Owner or Occupant, makes objectionable noise, or constitutes a nuisance or inconvenience to the Owners or Occupants, or to the owner of any property located adjacent to the Community, may be permanently removed by the Board from the Community upon seven (7) days written notice to the owner of such pet. If the Owner or Occupant fails to remove the pet from the Community, the Board may remove the pet. Notwithstanding the foregoing, any pet which, in the Board's sole discretion, presents

an immediate danger to the health, safety or property of any Community Member may be removed by the Board without prior written notice to the pet's owner.

All Owners and Occupants keeping pets within the Community shall comply with all applicable governmental ordinances and regulations. Without prejudice to the Board's right to remove any such household pets, the Board may prohibit a household pet that has caused damage or injury from being walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall also be registered, licensed and inoculated as required by law. Furthermore, any Owner or Occupant who keeps or maintains any pet upon the Community shall be deemed to have agreed to indemnify and hold the Association, its directors, Officers, and agents, free and harmless from any loss, claim or liability of any kind or character whatever, arising by reason of keeping or maintaining such pet within the Community.

9.12. Prohibition of Damage, Nuisance and Noise. The Townhomes are built in close proximity to one another, resulting in the sharing of common walls. As a result, noise and vibration may be detectable between Townhomes. Therefore, an Owner or Occupant shall not conduct activities within a Townhome or on any portion of the Community in a manner that interferes with or causes disruption to the use and quiet enjoyment of another Townhome by its respective Owner and Occupant; including, without limitation, the use of stereo speakers or equipment that will, in the reasonable discretion of the Board of Directors, interfere with the rights, comfort or convenience of other Owners or Occupants. Furthermore, without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier or other sound device, except for 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. Notwithstanding the foregoing, any siren or device for security purposes shall contain a device that causes it to automatically shut off within fifteen (15) minutes.

It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. No Lot on the Community shall be used, in whole or in part, for the storage of any property or thing that will cause a Lot to appear to be in an unclean or untidy condition, or that will be obnoxious to the eye. Moreover, no substance, thing, or material may be kept on any portion of the Community that will discharge foul or obnoxious odors, or that will cause any noise or other condition that will or might disturb the surrounding property. Furthermore, no noxious, destructive or offensive activity shall be conducted within any portion of the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property on the Community. No Owner or Occupant shall maintain any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community.

No damage to or waste of the Common Property, or any part thereof, shall be permitted by any Owner or member of his or her family, or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot.

Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights.

9.13. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities which might tend to cause disorderly, unsightly, or unkempt conditions, including without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, shall not be pursued or undertaken on any part of the Community. Clothing, clotheslines, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Townhome. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture and grills may be kept on the patio or landing serving the Lot.

9.14. Window Treatments. All windows in a Townhome must have window treatments. The color of all window treatments visible from outside the Townhome must be white or off-white. No foil or other reflective materials shall be used on any window for sunscreens, blinds, shades or for any other purpose. Bed sheets and/or towels shall not be used as window treatments.

9.15. Air Conditioning Units. Except as may be permitted by written consent of the ARC, no window air conditioning units may be installed. Unless otherwise placed on a Lot by Declarant, condensing units for air conditioners shall only be located in the rear or along the side of a Townhome.

9.16. Antennas and Satellite Dishes. Except as provided below, no satellite dish, 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 on any portion of the Community; provided, however, that the Association shall have the right to erect, construct and maintain such devices. The following shall apply to all Owners:

(a) No transmission antenna of any kind may be erected anywhere on the Community without written approval of the Board of Directors or the ARC.

(b) No direct broadcast satellite (DBS), antenna, or multi-channel multi-point distribution service (MMDS) antenna larger than one (1) meter in diameter shall be placed, allowed or maintained upon the Community.

(c) DBS and MMDS satellite dishes or antennas one (1) 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, both as may be amended from time to time. Unless an Owner can demonstrate that reception would otherwise be impaired, any satellite dish shall only be located along the rear or side of an Owner's Townhome.

In the event of a transfer of a Lot which includes the satellite dish or antenna, the Grantee shall assume all responsibility for the satellite dish or antenna, and shall comply with this Declaration, the Bylaws, and the rules and regulations regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dish or antenna.

9.17. 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, without the prior written consent of the ARC.

9.18. Recreational Areas. Any recreational area or other areas or equipment located on the Common Property, if any, shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof. No equipment (including basketball goals) shall be erected, installed or placed on any Lot without the prior written consent of the ARC.

9.19. Rubbish, Trash, and Garbage Disposal. All garbage or trash receptacles shall be kept in garages. Only on the day of garbage pick-up may the receptacles be left in the open. In no event may garbage containers be left out more than sixteen (16) consecutive hours. The above provisions in this paragraph are not applicable to construction debris, rubbish, trash and garbage; provided, however, all such construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to unreasonably accumulate.

9.20. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

9.21. Outbuildings. No structures of a temporary character, such as tents, shacks, carports, barns, tool sheds, dog houses, cages or coops, or other outbuilding shall be erected by any Owner or Occupant on any portion of the Community at any time, other than by Declarant.

9.22. Tree Removal. No trees or shrubs on any portion of the Community shall be removed without the express written consent of the ARC.

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

9.24. Heating and Cooling of Townhomes. In order to prevent breakage of water pipes during colder months of the year, resulting in damage to the Community, increased Common Expenses, and increased insurance premiums, or cancellation of insurance policies due to numerous damage claims, the thermostats within the Townhome shall be maintained with the heat in an "on" position and at a minimum temperature setting of sixty degrees (60°) Fahrenheit (except during power failures or periods when heating equipment is broken), whenever the temperature is forecasted to or does reach thirty-two degrees (32°) Fahrenheit or below. In order to prevent the growth of mold and mildew during warmer months of the year, resulting in damage to any portion of the Community, increased Common Expenses, and increased insurance premiums, or cancellation of insurance policies due to numerous damage claims, the thermostats within the Townhomes shall be maintained with the air conditioning in an "on" position and at a maximum temperature setting of eighty-five degrees (85°) Fahrenheit (excepting power failures or periods when air conditioning equipment is broken), whenever the temperature is forecasted to or does reach ninety degrees (90°) Fahrenheit or above. Owners and Occupants of Lots shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Owner or Occupant shall immediately inform the Association of this failure of the equipment, and of the time needed to repair the equipment. All Owners and Occupants of Lots also shall be obligated to shut any and all cut-off valves for any and all outdoor spigots whenever the temperature is forecasted to or does reach thirty-two degrees (32°) Fahrenheit or below. Notwithstanding any provision in this Declaration or in the Bylaws to the contrary, the Board of Directors, without a prior warning, demand or hearing, may fine any Owner or Occupant up to Five Hundred Dollars (\$500.00), or may cause the water service to the violator's Lot to be discontinued for violation of this paragraph, in addition to any other remedies of the Association. Any fine imposed pursuant to this paragraph shall be deemed an assessment against the Lot, and may be collected in the same manner as provided herein for collection of assessments.

9.25. Abandoned Personal Property. Personal property, except for personal property owned by the Association, is strictly 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, or on the rights-of-way located within the Community. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Property or on the rights-of-way located on the Community in violation of this paragraph, then the Board may remove and either discard or store the personal property in a location which the Board may determine. If personal property is removed in accordance with this paragraph, neither the Association nor any Officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

9.26. Impairment of Townhomes and Easements. An Owner shall do no act or any work that will impair the structural soundness or integrity of any Townhome, or impair any easement or other interest in real property, nor do any act or allow any condition to exist which will adversely affect the other Townhomes or their Owners or Occupants.

9.27. Lighting. Except as may be permitted by the ARC, exterior lighting shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) street lights in conformity with an established street lighting program for the Community, if any; (c) seasonal decorative white lights; or (d) front Townhouse illumination of model homes, if any. Illumination for all exterior lighting shall be generated from clear light bulbs or such other light bulbs specified by the Association.

9.28. Mailboxes. Declarant may provide a mailbox for each Lot. In the event Declarant provides a mailbox for each Lot and such mailbox is destroyed or damaged, it shall be replaced or restored to its original appearance, unless prior approval is given by the ARC for a different mailbox.



9.29. Patios and Landings. No objects other than potted plants, patio furniture, and grills shall be placed on a patio or landing. This prohibition applies to objects such as, but not limited to, umbrellas, bicycles, laundry garments, towels and objects other than potted plants and patio furniture, except as may be authorized by the Board. Objects shall not be permitted to hang over or be attached to any exterior patio or landing wall, or to otherwise protrude outside of the vertical plane formed by the exterior surface of the patio or landing wall. Penetration of the surfaces of a patio or landing wall or floor is prohibited. Enclosure of a patio or landing is also prohibited. As used herein, "enclosure" shall mean the permanent enclosure of a patio or landing into the heated and cooled space within the boundaries of a Townhome.

9.30. Grilling. The use of outdoor grills on any portion of the Community, including, without limitation, a patio or deck, shall be governed by applicable state laws and local ordinances having jurisdiction over the Community.

9.31. Zoning and Private Restrictions. None of the covenants, restrictions, or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules, or regulations of any applicable governmental body. In the event of any conflict between such laws, rules, or regulations and the covenants, restrictions, and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

9.32. Electric Vehicles. Any charging station or the like used for the charging of any electric vehicle shall only be allowed in the garage of a Townhome. In no circumstance shall any Owner or other person use any portion of the Common Area for charging or allow any cords, stations, batteries, or the like run across any portion of the Common Area.

## ARTICLE 10.

### Leasing

10.1. Leasing of Townhomes shall be allowed subject only to the following:

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

(a) Compliance with Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto, and shall control the conduct of all other Occupants and guests of the leased Townhome in order to ensure such compliance. The Owner shall cause all Occupants of his or her Townhome to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Townhome are fully liable, and may be sanctioned for any such violation. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with Article 5 of the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease, and authorizes the Owner to terminate the lease without liability, and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee

for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred, and court costs associated with the eviction, shall be an assessment and lien against the Lot.

(b) 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.

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

10.2. Applicability of Article 10. Notwithstanding the above, this Article 10 shall not apply to any leasing transaction entered into by Declarant (regardless of whether said lease is entered into prior to or after the expiration of Declarant's right to appoint and remove Officers and directors of the Association pursuant to Article 3.A, Section 2 of the Bylaws), the association, or the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage. Such parties shall be permitted to lease a Townhome without first obtaining a permit in accordance with this Article 10, and such Townhome shall not be considered as being leased in determining the maximum number of Townhomes that may be leased in accordance with this Article 10.

## ARTICLE 11.

### Transfer or Sale of Lots

An Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give written notice to the Board of Directors of such intention within seven (7) days after execution of the purchase agreement. The Owner shall furnish to the Board, as part of the notice, (a) the name and address of the intended grantee; and (b) such other information as the Board may reasonably require. In addition, the purchase agreement or transfer documents shall attach a copy of the Declaration and Bylaws. This Article shall not be construed to create a right of first refusal in the Association or in any third party.

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

**ARTICLE 12.****Maintenance**

12.1. Association's Responsibility. Except as otherwise provided for herein, the Association shall maintain, landscape and keep in good repair, as the case may be, all portions of the Common Property, including any easement area benefitting the Association and/or its Owners, if such maintenance is required in the easement agreement. The Associations' responsibility with respect to such area shall be deemed to include the maintenance, repair and replacement of:

- (a) any wall or fence benefitting more than one Lot which is along the boundary line of the Property; and
- (b) any and all roads, driveways, walks, parking areas;
- (c) any utility lines, pipes, plumbing, wires, conduits and systems which are part of and serve only the Common Property;
- (d) any entryway treatment, entryway signs and entryway landscaping for Village Stacks;
- (e) all lights on the Common Property, if any;
- (f) all the irrigation facilities, if any, servicing the Common Property or any portion of a Lot, unless the Owner of the Lot has constructed a fence with the consent of the Board as provided in Paragraph 9.17;
- (g) any lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Property or any portion of a Lot, unless the Owner of the Lot has constructed a fence with the consent of the Board as provided in Section 9.7 hereof;
- (h) any common trash or dumpster area, if provided, including any fencing, gates or related services;
- (i) cutting, mowing and blowing of any lawns, grass and other landscaping situated within the Property;

12.2. Liability of Association. The Association shall not be liable for injury or damage to any person or property caused by the elements or by any Owner or any other person. 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 to 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 improvements or repairs 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, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

12.3. Owner's Responsibilities. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of Townhome and the Lot shall be the responsibility of the Owner of such Townhome. Each Owner shall be responsible for maintaining his Townhome in a neat, clean and sanitary condition, and such responsibility shall include but not be limited to the maintenance and care of all exterior surfaces of all the Townhome (including repainting and roof repair). Each Owner shall further be responsible for all portions of the heating and air conditioning systems, including the air conditioning compressor serving the Unit and fan coil and all pipes, lines, ducts, conduits, or other apparatus which serve only the Townhome, whether or not located within a Townhome's boundaries. As provided in Paragraph 12.4 hereof, each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any items which is the responsibility of such Owner but which responsibility such Owner fails or refuses to discharge. No Owner shall (a) decorate, repaint, change or otherwise alter the appearance of any portion of the exterior of his Townhome unless such decoration, repainting, change or alteration is first approved, in writing, by the Board of Directors as provided

in this Declaration, or (b) do any work which, in the reasonable opinion of the Board of Directors, would jeopardize the soundness and safety of the Property, reduce the value thereof or impair any easement or hereditament thereto, without in every such case obtaining the prior written approval of the Board of Directors.

12.4. Failure of Owner to Maintain. In the event that Declarant or the Board determines that: (i) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, cleaning, repair or replacement of items for which he is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of any Owner, his family, tenants, guests or invitee, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such owner and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement within said fifteen (15) day period and shall diligently pursue such maintenance, cleaning, repair or replacement until completed. In the event the Owner fails or refuses to perform the necessary maintenance, cleaning and repair as described herein within the time periods as described hereinabove, the Association shall have the right to provide such necessary maintenance, cleaning, repair or replacement on behalf of said Owner and any and all costs associated therewith shall become an Specific Assessment pursuant to Paragraph 5.8 hereof.

12.5. Measures Related to Insurance Coverage.

(a) The Board of Directors, upon resolution, shall have the authority to require all or any Owner(s) to do any act or perform any work involving portions of the Community which are the maintenance responsibility of the Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage to the Community, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all Owners to turn off cutoff valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes; requiring Owners to install smoke detectors; requiring Owners to make improvements to the Owner's Lot; and such other measures as the Board may reasonably require, so long as the cost of such work does not exceed Five Hundred Dollars (\$500.00) per lot in any twelve (12) month period.

(b) In addition to, and not in limitation of, any other rights the Association may have, if any, Owner does not comply with any reasonable requirement made by the Board of Directors pursuant to Paragraph 12.4(a) above, the Association, upon fifteen (15) days written notice (during which period the Owner may perform the required act or work without further liability), may perform such required act or work at the Owner's sole cost and expense. Such cost shall be specifically assessed against the Owner, and shall be added to and become a part of the assessment obligation of such Owner, and shall become a lien against the Lot, and shall be collected in the manner provided for collection of assessments. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to this Paragraph 12.4(b), including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot, except that access may be had at any time without notice in an emergency situation.

12.6. Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof, and the interpretation of maintenance obligations under this Declaration may vary as the composition of the Board of Directors changes. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Article 12. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

12.7. Mold and/or Mildew. Mold and/or mildew can grow in any portion of the Community that is exposed to elevated levels of moisture. The Association and each Owner agree to (a) regularly inspect the parts of the Community that they respectively maintain, and which are visible and accessible without having to first conduct

invasive testing, for the existence of mold, mildew, and/or water intrusion (except when the water intrusion is part of the normal functioning of improvements and appliances, such as showers, sinks, dishwashers, and other similar appliances and improvements) and/or damage; (b) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Community that they respectively maintain; (c) remediate or replace any building material located in the parts of the Community that they respectively maintain that has absorbed water or moisture as a result of water intrusion; and (d) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Community that they respectively maintain in accordance with current industry-accepted methods. In addition, the Association agrees to notify the Owners, and each Owner agrees to notify the Association, of the discovery of mold, mildew, and/or water intrusion and/or damage in the parts of the Community that they respectively maintain. Each Owner further agrees not to block or cover any of the heating, ventilation or air-conditioning ducts located in the Townhome.

Notwithstanding anything to the contrary herein, Declarant shall have no obligation to perform any invasive testing or inspections, maintenance or repairs in accordance with this Section, and shall not be held liable for any loss or damage caused by the failure of the Association or an Owner to perform their obligations herein.

**ARTICLE 13.**

**Party Walls and Fences**

13.1. General Rules of Law to Apply. Each wall or fence built as a part of the original construction on the Lots, which shall serve and/or separate any two (2) adjoining Lots, shall constitute a party wall or party fence, as applicable. To the extent not inconsistent with the provisions of this Paragraph 13.1, the general rules of law regarding the party walls and liability for property damage due to negligence, or willful acts or omissions, shall apply thereto. Owner shall make no modification to party wall construction that may compromise acoustic privacy and fire rating.

13.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence wall shall be shared equally by the Owners who make use of the wall or fence.

13.3. Damage and Destruction. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the party wall or fence may restore it. If other Owners thereafter use the wall or fence, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

13.4. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article 13 shall be appurtenant to the land, and shall pass to such Owner's successors-in-title.

**ARTICLE 14.**

**Mortgagee Provisions**

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

14.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association, such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "Eligible 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 Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Mortgage Holder; where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

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

(d) any proposed action which would require the consent of a specified percentage of Mortgage holders.

14.2. Approval of Action. Unless two-thirds (2/3) of the first Mortgagees or Owners, other than Declarant, give their consent, the Association shall not:

(a) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this Section), other than personal property of the Association;

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

(c) by act or omission, change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Property (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this Section);

(d) fail to maintain insurance as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

Nothing contained in this Section shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration for any of the acts set out in this section.

First Mortgagees, after written notice to the Association, may, jointly or singly, pay taxes or other charges which are in default, and which may or have become a charge against the Common Property, and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage, upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

14.3. No Priority. No provision of this Declaration or the Bylaws gives, or shall be construed as giving, any Owner or other party priority over any rights of the first Mortgagee of any Lot, in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

14.4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

14.5. Amendments by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article, or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

14.6. VA/HUD Approval. As long as Declarant has the right to appoint and remove the directors of the Association, the following actions shall require the prior approval of the U.S. Department of Veteran's Affairs (the "VA"), so long as the VA is guaranteeing any Mortgage in the Community, and the U.S. Department of Housing and Urban Development ("HUD"), so long as HUD is guaranteeing any Mortgage in the Community:

- (a) annexation of additional property to the Community;
- (b) dedication of Common Property to any public entity;
- (c) mortgaging of Common Property;
- (d) mergers and consolidations;
- (e) dissolution of the Association; and
- (f) material amendment of this Declaration, the Bylaws, or the Articles of Incorporation.

14.7. Applicability of this Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the Bylaws, or Georgia law for any of the acts set out in this Article.

14.8. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## ARTICLE 15.

### Easements

15.1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and adjacent portion of the Common Property, or as between adjacent Lots, due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered (in accordance with the terms of this Declaration). The easement shall be five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property, or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point. However, an easement for encroachment shall not exist if the willful conduct by an Owner, Occupant, or the Association caused the encroachment.

15.2. Easements for Use and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of entry and exit, use and enjoyment, in and to the Common Property that shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:

(i) the right, but not the obligation, of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his or her family, tenants, guests, and invitees;

(ii) the right of the Association to suspend the voting rights of an Owner, and the right of an Owner to use the recreational facilities in the Community, if any, for any period during which any assessment against his or her Lot which is provided for herein remains unpaid, and for a reasonable period of time for an infraction of the Declaration, Bylaws, or roles and regulations;

(iii) the right of the Association to borrow money as may be set forth in the Bylaws; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and

subordinate to any rights, interests, options, easements and privileges herein reserved or established for any Lot or Owner, or the holder of any Mortgage (irrespective of when executed) encumbering any Lot or other property located within the Community. (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Community.);

(iv) the right of the Association to dedicate or grant permits, licenses or easements over, under, through and across the Common Property to governmental entities for public purposes; and

(v) the right of the Association to dedicate or transfer all or any portion of the Common Property, subject to such conditions as may be agreed to by the Members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the affirmative vote of the Owners of at least two-thirds (2/3) of the Lots (other than Lots of Declarant so long as the consent of Declarant is required), and the consent of Declarant (so long as Declarant owns any property for development and/or sale in the Community, or has the right unilaterally to annex additional property to the Community).

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

15.3. Easements for Street Lights and Utilities. There is reserved to Declarant and the Association blanket easements upon, across, above and under all Lots on the Community for access, ingress, egress, installation, repairing, replacing and maintaining all utilities and services, including but not limited to all street lights serving the Common Property, and reading meters for (a) all utilities serving the Community or any portion of the Common Property, including, but not limited to, gas, water, sanitary sewer, telephone and electricity; (b) water runoff and stormwater management facilities; (c) street lights; and (d) any other services such as, but not limited to, a master television antenna system, cable television system, master satellite system, or security system, which may be installed to serve the Community. It shall be expressly permissible for Declarant, the Association, or the designee of either, to do or to authorize the installation, repairing, replacing, and maintaining of the wires, conduits, cables, bulbs and other equipment related to providing any such utility or service. Should a party furnishing any such utility or service request a specific license or easement by separate recordable document, Declarant or Board, as applicable, shall have the right to grant such easement.

It shall also be expressly permissible for any agent or employee of any utility company to enter onto a Lot to read any utility meter. In the event a meter on a Lot is in a gated or fenced-in area, such area shall be universally keyed for the utility company(ies) or, at the request of the Association, such Owner shall provide the Association with a key to such area to be used by the utility company. Neither Declarant nor the Association shall be liable for any loss or damage due to its holding such key or use of such key for the purposes described above, and each Owner shall indemnify and hold harmless Declarant, the Association and its Officers and directors against any and all expenses, including reasonable attorneys' fees actually incurred by or imposed upon Declarant, the Association or its Officers or directors in connection with any action, suit or other proceeding (including settlement of such action, suit or proceeding) brought by the Owner or the Owner's family, tenants, guests, employees, invitees or licensees against Declarant, the Association, its Officers or directors, arising out of or relating to its holdings or use of such key for the purposes described above.

15.4. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in the Association's legal instruments, the Board shall have the right, but not the obligation, to enter upon any property on the Community for emergency, security, and safety reasons. This right may also be exercised by the agents of the Association, and all policeman, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition after request by the Board.



15.5. Easement for Association Maintenance. Declarant expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required pursuant to this Declaration. This maintenance shall be performed with a minimum of interference to the quiet enjoyment to a Lot.

15.6. Easement for Entry Features and Street Signs. There is hereby reserved to Declarant, the Association, and the designee of either, an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of entry features and street signs for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features, if any, and the right to grade the land under and around the entry features, if any.

15.7. Easement for Access, Ingress, and Egress. There is hereby reserved to each Lot Owner a perpetual non-exclusive easement over the Common Property roadways and walkways for the purpose of pedestrian and vehicular access, ingress, and egress to and from his/her Lot. Any conveyance or encumbrance of the Common Property shall be subject to this easement.

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

**ARTICLE 16.**

**General Provisions**

16.1. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant

(a) if an amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination with which it is in conflict therewith;

(b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration;

(c) if an amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable the lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or

(d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration;

provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Owner shall consent thereto in writing. Further, so long as Declarant owns any property for development and/or sale in the Community, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots and the consent of Declarant (so long

as Declarant owns any property for development and/or sale in the Community). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. Notwithstanding the foregoing, no provision of this Declaration which benefits, reserves, or grants special rights to Declarant shall be amended, modified, altered or deleted without Declarant's prior written approval, so long as Declarant owns any property for development and/or sale in the Community.

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

16.2. Duration. The covenants, restrictions and easements of this Declaration shall run with and bind the Community, and shall inure to the benefit of, and shall be enforceable by, the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless fifty-one percent (51%) of the Owners execute a document to terminate the covenants containing a legal description of the entire area affected by the covenants, a list of all Owners affected by the covenants, and a description of the covenants to be terminated or such other requirement as provided in O.C.G.A. § 44-5-60. A written instrument reflecting any termination must be recorded no sooner than, but within two (2) years immediately preceding the beginning of, a twenty (20) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Paragraph 16.2.

16.3. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community safer than it otherwise might be. **NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT, SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD OF DIRECTORS, DECLARANT, ANY SUCCESSOR DECLARANT, AND THE ARC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT OR THE ARC, IF ANY, MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, ASSAULT OR OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT, ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS, AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT, HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.**

16.4. Dispute Resolution. Any 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 director, or any agent 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 no less than seven (7) or more than twenty-one (21) days from the date of receipt of the notice of hearing by the Person requesting the hearing.

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

16.6. Indemnification. In accordance with the Georgia Nonprofit Corporation Code, and to the full extent allowed by Georgia law, the Association shall indemnify every person who was or is a party, or who is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such person is or was serving as a director or Officer of the Association, against any and all expenses, including reasonable attorneys' fees actually incurred or imposed upon in connection with any action, suit, or proceeding, if such person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association; and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the person is proper under the circumstances.

16.7. 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 or reasonably necessary to effectuate the right or privilege.

16.8. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violations of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

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

16.10. Agreements. Subject to the prior approval of Declarant (until Declarant no longer has the right to appoint and remove directors and Officers of the Association pursuant to Article III, Part A, Section 2 of the Bylaws), all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community, or the privilege of possession and enjoyment of any part of the Community.

16.11. Disclosures. Each Owner and Occupant acknowledge the following:

(a) The Community is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved or widened in the future.

(b) The views from an Owner's Lot may change over time due to, among other circumstances, additional development and the removal or addition of landscaping.

(c) Declarant makes no representations regarding the schools that currently or may in the future serve the Community.

(d) No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.

(e) Since in every neighborhood there are conditions which different people may find objectionable, it is acknowledged that there may be conditions outside of the Community that an Owner or Occupant may find objectionable, and that it shall be the sole responsibility of the Owners and Occupants to become acquainted with neighborhood conditions which could affect the Lot.

(f) Declarant will be engaging in other construction activities related to the construction of the Community. Such construction activities may, from time to time, produce certain conditions in the Community, including, without limitation (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic, or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; and/or (vii) temporary interruption of utilities and services; (viii) mud and other debris on the Community roadways and Common Property; and/or (ix) other conditions that may threaten the security or safety of Persons in the Community. In addition, each Owner and Occupant further acknowledges and understands that Declarant will be engaging in construction activities related to the construction of the Community on weekends and early morning and late evening hours, and that the Association shall not seek to regulate or limit hours of construction in a manner that is more restrictive to Declarant than set forth regulations adopted by the City of Decatur. Notwithstanding the foregoing, each Owner and Occupant agrees that such conditions in the Community resulting from construction activities shall not be deemed a nuisance, and shall not cause Declarant or its respective agents to be deemed in violation of any provision of the Declaration.

(g) Declarant hereby expressly reserves the right to replat any Lot or Lots owned by Declarant or convert any open spaces located within the Community into a Lot or Lots without the consent of the Association or affected Owners.

(h) Exposed concrete surfaces of the improvements located on the Community are subject to cracking.

(i) Declarant makes no representation regarding the sound proofing of a Townhome, or that sound will not be transmitted from one Townhome to another. Sound transmission between Townhomes is inherent in multi-family construction and is not a warrantable condition.

(j) A Townhome may trap humidity created by everyday living (cooking, bathing, laundering etc.). As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Owners and/or Occupants, the condensation may increase, resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and, potentially, mildew and/or mold (see Paragraph 12.6 hereof).

(k) Each Owner and Occupant further acknowledges and understands that the Townhome may contain toxic mold. Molds are a type of fungus. More than 1,000 different species have been found in the United States. Most molds are not harmful; however, over 100 mold species are known to potentially cause infection in humans. In addition, several types of molds are considered "toxic," which means that they can produce toxic agents (metabolites) called mycotoxins, which can cause serious health problems. Declarant is not an expert with regard to mold or the health effects of mold exposure. Accordingly, it is the sole responsibility of Owner and Occupant to retain appropriate professionals to inspect the Townhome to determine the presence of any toxic mold.

(l) While the drainage system for surface water runoff on the Community will be constructed in accordance with applicable governmental standards, the Community may still be subject to erosion and/or flooding during unusually intense or prolonged periods of rain.

(m) Since trees and landscaping existing on the Community, prior to the commencement of construction thereon, may be adversely affected or even killed by construction activities, Declarant and the Association shall have no responsibility for the same.

(n) The Community is located in the vicinity of retail shops, office buildings and parking lots that may emit light and noise that are visible and audible from Lots within the Community.

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

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

## ARTICLE 17.

### Withdrawal of Property; Additional Common Property

17.1. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time, for so long as Declarant owns any property for development or sale in the Community pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Community then owned by Declarant or its affiliates from the provisions of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community desired to be effected by Declarant.

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

## ARTICLE 18.

### Declarant's Rights

18.1. Transfer of Declarant's Rights. Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or in the Bylaws, as applicable. Furthermore, no such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the public records of DeKalb County.

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

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

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

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

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

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

(f) the right to erect and maintain signs, and

(g) the right to construct and operate business offices, construction trailers, model Townhomes, and sales offices. Declarant may use Townhomes, offices, or other buildings owned or leased by Declarant as model Townhomes and sales offices.

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

IN WITNESS WHEREOF, Declarant has executed this Declaration under seal this 17th day of December, 2020.

Signed, sealed and delivered in the presence of:

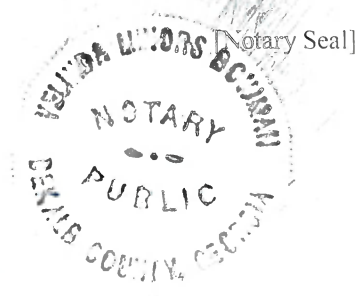
**MAY AVENUE DEVELOPMENT, LLC**, a Georgia limited liability company

By: EpiCity, Inc., its sole Manager

Wanda Racy  
Unofficial Witness

By: Theodore J. LaVallee Jr.  
Theodore J. LaVallee Jr., its Vice-President

Valerie Mines Baum  
Notary Public  
My Commission Expires: 8/26/22



**EXHIBIT "A"****Legal Description**

DeKalb County, Georgia, being more particularly described as follows:

Beginning at the intersection of Patterson Avenue (30 foot right of way) and May Avenue (40 foot right of way) at a ½ inch crimp top pipe, being the Point of Beginning. From the Point of Beginning, thence travel along the northern right of way of May Avenue north 88 degrees 41 minutes 06 seconds west 74.86 feet to a ½ inch open top pipe; thence north 89 degrees 03 minutes 13 seconds west 50.02 feet to a ½ inch rebar; thence north 88 degrees 49 feet 57 seconds west 50.00 feet to a point; thence leave the May Avenue right of way and proceed north 01 degrees 02 minutes 01 seconds east 168.68 feet to a point on a 10-foot alley; thence proceed along the south side of said 10-foot alley south 89 degrees 37 minutes 04 seconds east 50.00 feet to a rebar; thence south 89 degrees 18 minutes 10 seconds east 50.00 feet to a ½ inch open top pipe; thence south 89 degrees 48 minutes 27 seconds east a distance of 74.57 feet to a 1 inch open top pipe on the western right of way of Patterson Avenue; then proceed south along the west right of way of Patterson Avenue south 00 degrees 57 minutes 51 seconds west 64.76 feet to a 1 inch open top pipe; then south 00 degrees 54 minutes 08 seconds west 106.29 feet to a ½ inch crimp top and the Point of Beginning.

This Property contain approximately 54,500 square feet and is shown on a survey for LNH Properties by McClung Surveying Services, Inc., Michael R. Noles, GRLS No. 2646, dated October 31, 2016, Job No. 170410.

**EXHIBIT "B"****Bylaws of Village Stacks Homeowners Association, Inc.****ARTICLE 1.  
NAME AND LOCATION**

The name of the association is Village Stacks Homeowners Association, Inc. (hereinafter referred to as the "Association"). The principal office of the Association (until otherwise designated by the Board) (as hereinafter defined) shall be located at 430 Plasters Ave NE, Suite 100, Atlanta, GA 30324-3912, but meetings of Members and directors may be held at such other places within the State of Georgia, as may be designated by the Board.

**ARTICLE 2.  
DEFINITIONS**

Unless otherwise set forth herein, the terms used in these By-Laws shall have the same meanings ascribed to such terms as set forth in the Declaration of Covenants, Restrictions, and Easements for Stacks, dated as of December 12, 2020, and is to be executed by a duly authorized officer of the Association, and is to be filed for record in the office of the Clerk of the Superior Court of DeKalb County, Georgia, as such Declaration may be amended from time to time, and which Declaration is incorporated herein by reference.

**ARTICLE 3.  
MEETINGS**

3.1. Annual Meeting of Members. The regular annual meeting of the Members shall be held not later than six (6) months past the end of the fiscal year of the Association, on a date (which is not a legal holiday) and at such place within the State of Georgia, as shall be designated in the call of meeting pursuant to Section 3.3 below. If no such date is designated, the annual meeting shall be held on the third Monday in March, if not a legal holiday, and if a legal holiday, then on the next business day succeeding. The Members shall at such annual meeting elect a Board for the ensuing year, in the manner provided in Article 4 hereof, and shall have authority to transact any and all business which may be brought before such meeting.

3.2. Special Meeting of Members. Special meetings of Members shall be held at such place within the State of Georgia as shall be designated in the call of the meeting. Special meetings may be called by the President at any time and must be called by the President when so requested in writing by any two (2) directors or by twenty-five percent (25%) of the Class A Membership.

3.3. Notice of Meetings. Written notice of the place, date, and time of every annual or special meeting of Members shall be mailed to each Member at least twenty-one (21) days before such annual meeting or seven (7) days before such special meeting. Each Member shall register his address with the Association, and notices of meetings shall be mailed to him at such address, and if no such address has been registered, at the last-known address of the Member. If for a special meeting, such notice shall state the purposes or objects of the meeting. It shall not be necessary that notice of an annual meeting specify the business to be transacted at such meeting, but such notice shall specify the number of directors to be elected at such annual meeting.

3.4. Quorum. Unless otherwise provided in the Declaration, a quorum at any meeting of Members, whether annual or special, shall consist of the presence at such meeting, in person or by proxy, of Members entitled to cast one-fourth (1/4) of the votes of each Class of Membership. Unless otherwise provided in the Articles of

---

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

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



Incorporation of the Association, or in the Declaration, or in these By-Laws, a majority of the votes entitled to be cast by all Members present at a meeting shall be necessary and sufficient to decide and act upon any question which shall come before the meeting. No business shall be transacted at any meeting unless a quorum is present.

3.5. Voting. Voting rights of Members shall be as set forth in the Declaration. Where any Member is a group or entity other than one individual person, the vote on behalf of such Member shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such Member, and delivered to the Secretary of the Association.

#### **ARTICLE 4. DIRECTORS**

4.1. Number. The affairs of this Association shall be managed by an initial Board of four (4) directors, who do not need to be Members of the Association, and who shall be appointed and removed in accordance with Section 3.8 of the Declaration until the date specified in Section 3.8 of the Declaration. Once the control of the Association passes to the Class A Members as provided in the Declaration, the affairs of the Association shall be managed by a Board of three (3) directors. Once the control of the Association passes to the Class A Members, the exact number of directors shall be determined, and may be changed from time to time, by a vote of the Members at any meeting of the Members at which a quorum is present.

4.2. Term of Office. At the first annual meeting after control of the Association has passed to the Class A Membership, the Members shall elect the first 3 member Board of Directors. The director receiving the highest number of votes shall be elected for a term of 3 years. The director receiving the next highest number of votes shall be elected for a term of 2 years, and the 3rd director will hold a 1 year term. At each annual meeting thereafter, a successor shall be elected to serve for a term of 3 years. The members of the Board shall hold office until their respective successors shall have been elected by the Association.

4.3. Removal. Once the control of the Association passes to the Class A Members as provided in the Declaration, any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of the death, resignation, or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

4.4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his reasonable actual expenses incurred in the performance of his duties.

4.5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

4.6. Nomination. Nomination for elected members to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

4.7. Election. Election to the Board shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.8. Regular Meetings of Directors. Regular meetings of the Board shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should such meeting

fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

4.9. Special Meetings of Directors. Special meetings of the Board shall be held at such place within the State of Georgia as shall be designated in the call of such meetings. Special meetings of the Board may be called by the President at any time in his discretion, and must be called by the President whenever so requested in writing by two (2) members of the Board.

4.10. Notice of Meetings. Notices of special meetings of the Board shall be given by the President or the Secretary to each member of the Board, not less than three (3) days before the time at which such meetings are to convene. Said notices may be given by telephone, or by any other form of written or verbal communication. It shall not be necessary for notices of special meetings of the Board to state the purposes or objects of the meetings. The Directors may waive notice of any meeting.

4.11. Quorum. A quorum at any meeting of the Board shall consist of a majority of the members of the Board. Unless otherwise provided in the Articles of Incorporation of the Association, or in these By-Laws, or in the Declaration, a majority of those present at any meeting at which a quorum is present may decide all questions which may come before the meeting.

4.12. Powers. The Board shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Members and their guests thereon, and establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of any recreational facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association; such rights may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days, for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(d) declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; and

(e) employ, retain, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the Association, the Board, and the officers of the Association.

4.13. Duties. It shall be the duty of the Board to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one fourth (1/4) of the Class A Members who are entitled to vote;

(b) supervise all officers, agents, and employees of the Association, and see that their duties are properly performed;

(c) as more fully provided in the Declaration:

(i) fix the amount of the annual assessment against each Lot at least fifteen (15) days in advance of each annual assessment period;

(ii) send written notice of each assessment to every Owner subject thereto at least fifteen (15) days in advance of each annual assessment period; and

(iii) foreclose the lien against any property for which assessments are not paid within fifteen (15) days after due date or bring an action at law against the Owner or Owners personally obligated to pay the same;

(d) issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid; a reasonable charge may be made by the Board or the management company employed by the Association for the issuance of these certificates; if a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate insurance on property owned by the Association, as provided in Article 11 of the Declaration; and

(f) cause the Association to carry out all of its duties and obligations under the Declaration.

#### **ARTICLE 5. OFFICERS AND THEIR DUTIES**

5.1. Enumeration of Officers. The officers of the Association shall be a President and a Vice-President, who shall at all times be members of the Board, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

5.2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

5.3. Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or be removed, or otherwise be disqualified to serve.

5.4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

5.5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

5.6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

5.7. Multiple Offices. Before control of the Association has passed to the Class A Membership, the same person may hold more than one office. After control of the Association has passed to the Class A Membership, no person shall simultaneously hold more than one office, except that the same person can hold the office of Secretary and Treasurer, and officers can also hold special offices created pursuant to Section 5.4 of this Article.

5.8. Duties. The duties of the officers are as follows:

(a) President. The President shall preside at all meetings of the Members and of the Board; shall see that orders and resolutions of the Board are carried out; shall execute all leases, mortgages, deeds, promissory notes, and other written instruments on behalf of the Association.

(b) Vice-President. The Vice-President shall act in the place and stead of the President in the event of his absence, or his inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; shall keep the corporate seal of the Association and affix it on all papers requiring said seal; shall serve notice of meetings of the Board and of the Members; shall keep appropriate current records showing the Members of the Association, together with their addresses; and shall perform such other duties as required by the Board.

(d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes on behalf of the Association; shall keep proper books of account; shall, after control of the Association has passed to the Class A Membership, cause an annual review of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and shall deliver a copy of each to the Members; provided, however, that any management company employed by the Association may be authorized to sign checks without the signature of the Treasurer.

## ARTICLE 6.

### SEAL

6.1. Corporate Seal. The corporate seal of the Association shall be in the following form, to-wit:

and the seal in such form is hereby adopted as the corporate seal of the Association.

## ARTICLE 7.

### MISCELLANEOUS

7.1. The Declaration. All provisions contained in the Declaration with regard to rights, powers, and duties of the Association, the Members thereof (including, without limitation, classes of Members and qualifications and rights of the members of each class), and the Board thereof, are hereby incorporated into these By-Laws by this reference, with the same effect as if such provisions were fully set forth herein.

7.2. Committees. The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purposes.

7.3. Books and Records. Pursuant to the Georgia Nonprofit Corporation Code the books and records of the Association shall at all times, during reasonable business hours, be open for inspection by any Member of the Association and any institutional holder, insurer or guarantor of a first mortgage.

7.4. Indemnification. The Association shall indemnify any person made a party to any action, suit, or proceeding, whether civil or criminal, by reason of the fact that he, his testator, or intestate, is or was a director, officer, or employee of the Association, against the reasonable expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense of the action, suit, or proceeding, or in connection with any appeal in it. This right of indemnification shall not apply in relation to matters as to which the director, officer, or employee shall be adjudged in the action, suit, or proceeding to be liable for negligence or misconduct in the performance of any duty to the Association. The right to indemnification conferred by this Section shall not restrict the power of the Association to make any other indemnification permitted by law.

7.5. Fiscal Year. The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

7.6. Parliamentary Rules. *Robert's Rules of Order* (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, these By-Laws, or a ruling made by the person presiding over the proceeding.

7.7. Conflicts. If there are conflicts or inconsistencies between the provisions of Georgia law, the Declaration, the Articles of Incorporation, or these By-Laws, then the provisions of Georgia law, the Declaration, the Articles of Incorporation, and these By-Laws (in that order) shall prevail.

7.8. Notices. Unless otherwise specified in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications required or permitted to be sent under the Declaration or these By-Laws shall be in writing, and shall be deemed to have been duly given if delivered personally or if sent by first class mail, postage prepaid:

(a) if to a Member, at the address which the Member has registered in writing and filed with the Secretary or, if no such address has been registered, at the last-known address of the Member; or

(b) 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 address as shall be designated by notice in writing to the Members.

If there are multiple Owners of a single piece of property, notice to one (1) shall be deemed to be notice to all.

7.9. Amendment. The provisions of the Declaration applicable to amendment of that instrument shall apply to any amendment to these By-Laws.

7.10. Fining Procedure. Except for the Leasing Fines provided in Section 6.20 of the Declaration, the Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(a) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:

(i) the alleged violation;

(ii) the action required to abate the violation; and

(iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of a fine, if the violation is not a continuing one; the Board or its designee may demand immediate abatement in such circumstances which, in the Board's determination, pose a danger to safety or property.

(b) Notices. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board may, upon notice, impose a fine. The notice shall state:

(i) the nature of the alleged violation;

(ii) that the alleged violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine;

(iii) that any statement, evidence, and witnesses may be produced by the alleged violator at the hearing; and

(iv) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(c) Hearing. If a hearing is requested, it shall be held before the Board in executive session, and the alleged violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing.

(d) Enforcement. The Board shall be entitled to enforce the collection of all fines and the abatement of all continuing violations by all means permitted under the Declaration or by Georgia law.