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Patty Baker, Clerk of Superior Court Cherokee Cty, GA

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
TOWNE WEST**

**THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP  
HOMEOWNERS ASSOCIATION, BUT DOES NOT SUBMIT THE PROJECT TO  
THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION  
ACT, O.C.G.A. § 44-3-220 ET SEQ.**

Prepared by and when recorded return to:  
Meritage Homes of Georgia, Inc.  
8800 E. Raintree  
Scottsdale, AZ 85260

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
TOWNE WEST**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TOWNE WEST ("Declaration") is made on the date of its recordation in the Superior Court of Cherokee County, Georgia by **MERITAGE HOMES OF GEORGIA, INC.**, an Arizona corporation ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property ("Property") located in the Cherokee County, State of Georgia, described on Exhibit "A" attached hereto.

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

WHEREAS, Declarant deems it desirable for the management and administration of the planned community and for the preservation of the values and amenities of the planned community to incorporate Towne West Homeowners Association, Inc. as a nonprofit corporation under the laws of the State of Georgia for the purposes of administering the limitations, covenants, conditions, restrictions, easements, liens and equitable servitudes created by or imposed in accordance with the provisions hereof, collecting and disbursing the assessments and charges imposed in accordance with the provisions hereof, and exercising such other powers as may be authorized by this Declaration, or by its Articles of Incorporation and Bylaws of the Association.

NOW, THEREFORE, Declarant hereby declares that the Property described above shall be subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges and liens (hereinafter sometimes collectively termed "Covenants and Restrictions") which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land, and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each Owner of any portion of the Property.

**ARTICLE I  
DEFINITIONS**

Section 1.1. "Architectural Committee" means the committee established by the Board pursuant to Section 3.4 of this Declaration.

Section 1.2. "Architectural Committee Rules" means the rules adopted by the Architectural Committee as such rules may be amended from time to time.

Section 1.3. "Articles" means the Articles of Incorporation of the Association which have been or will be filed with the Georgia Secretary of State, as said Articles may be amended from time to time.

Section 1.4. "Assessments" means the annual, specific, special, and neighborhood assessments levied and assessed against each Lot pursuant to Article IV of the Declaration.

Section 1.5. "Association" means Towne West Homeowners Association, Inc., a Georgia nonprofit corporation organized or to be organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.

Section 1.6. "Association Rules" means the rules and regulations adopted by the Association, as the same may be amended from time to time.

Section 1.7. "Board" means the appointed or elected body of the Association, vested with the authority to operate and manage the affairs of the Association under the Georgia Nonprofit Corporation Code, O.C.G.A. Section 14-3-101, *et seq.*

Section 1.8. "Builder" means a person or entity in the business of, or a person or entity which has an affiliate in the business of, constructing and selling homes or in the business of acting as a land banker that sells lots to persons or entities who construct and sell homes, which purchases a Lot or Lots without Residential Units constructed thereon for the purpose of constructing Residential Units thereon and selling such Lots and Residential Units.

Section 1.9. "Bylaws" means the bylaws of the Association, attached to this Declaration as Exhibit "B" and by this reference incorporated herein, as may be amended from time to time.

Section 1.10. "Common Area" means all real property owned by the Association or held in trust for the benefit of the Association or any real or personal property that the Association owns, leases or holds possessory use rights in whether now or in the future for the benefit of the Members, including, without limitation, all Stormwater Control Facilities that serve more than one Lot and are not maintained by any governmental authority, but such definition shall not preclude the Association from operating, maintaining or repairing any other real property for the benefit of the Members of the Association (e.g. landscaping in public rights-of-way) or any other real property maintained by the Association pursuant to a written agreement entered into by the Association for the benefit of the Members or pursuant to a written agreement entered into by Declarant that is assigned to and assumed by the Association for the benefit of the Members. The Common Area shall include all real property designated as "Open Space," "Common Open Space", "Common Area", "Amenity Area" or other similar designation on the Plats of the Property and any real or personal property hereinafter designated as

Common Area by Declarant or the Association in a written document recorded in the office of the Cherokee County Superior Court.

Section 1.11. "Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.

Section 1.12. "County" means Cherokee County, Georgia.

Section 1.13. "Declarant" means Meritage Homes of Georgia, Inc., and its successors and assigns, and any assignee of Declarant's rights. A Declarant may assign its rights by express recorded instrument to a subsequent Owner of all or part of the Property. At any time when there is more than one Declarant, except as otherwise expressly provided in this Declaration, any approval or other action required or permitted by the "Declarant" under this Declaration shall require the written consent of the Declarants owning a majority of all Lots then owned by all Declarants. No successor Declarant shall have any liability resulting from any actions or inactions of any preceding Declarant unless expressly assumed by the successive Declarant, in which event the preceding Declarant shall be released from liability. If there is more than one Declarant, the obligations and liabilities of each Declarant under this Declaration shall be limited to the obligations that relate to the Lots within the Project then owned by such Declarant at the time liabilities or obligations arose, such liability shall not be joint or joint and several, and a Declarant shall not be liable for the actions or inactions of another Declarant.

Section 1.14. "Declaration" means the provisions of this document and any amendments hereto.

Section 1.15. "Designated Builder" means any Builder that is designated by Declarant as a "Designated Builder" in a supplemental declaration or in a written notice given by Declarant to the Association and by such designation receives certain rights as expressly provided in this Declaration.

Section 1.16. "Improvement" means buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

Section 1.17. "Lot" or "lot" means any plot of land within the Project, whether or not improvements are constructed thereon which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a Plat. The ownership of each Lot shall include, and there shall pass with the title to each Lot as an appurtenance thereto, whether or not separately described, all of the rights and interests of an Owner in and to the Common Area, as herein provided, together with membership in the Association. For purposes of voting on any issue required to receive the approval of Lot Owners, the Owner of a parcel not yet shown on a Plat but zoned for residential use shall be deemed to be the Owner of the maximum number of Lots into which such parcel may be subdivided under then applicable zoning and other legal requirements.

Section 1.18. "Member" or "member" means any person, corporation, partnership, joint venture or other legal entity who is a member of the Association.

Section 1.19. "Mortgage" means any and all instruments used for the purpose of encumbering or conveying title to real property in the Project as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt or deed of trust.

Section 1.20. "Mortgagee" means the holder of a Mortgage.

Section 1.21. "Notice and Opportunity for Hearing" or "notice and opportunity for hearing" means giving at least ten (10) days' prior notice of a proposed action and the reasons therefor, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.

Section 1.22. "Occupant" means any Person occupying all or any portion of a Lot for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

Section 1.23. "Operating Deficit" is defined as the difference between the total amount of the annual assessments for a fiscal year levied on all Lots and the amount of actual expenditures by the Association during the fiscal year for Common Expenses, including funding of reserves, but excluding (i) amounts levied against a Lot, but which are not paid, and (ii) special assessments for capital improvements and other assessments allowed in the Declaration that are not annual assessments.

Section 1.24. "Owner" or "owner" means the record owner, except as provided below, whether one or more persons or entities, of fee simple title to any lot, including without limitation, one who is buying a lot under a recorded contract, but excluding others having an interest merely as security for the performance of an obligation. In the case of a lot where fee simple title is vested of record in a trustee under a deed of trust, legal title shall be deemed to be in the trustor. In the case of a lot where fee simple title is vested in a trustee pursuant to a trust agreement, the beneficiary entitled to possession shall be deemed to be the Owner.

Section 1.25. "Person" includes any individual, individual acting in a fiduciary capacity, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company or other organization, recognized as a separate legal entity under Georgia law.

Section 1.26. "Plat" means any recorded subdivision plat of any portion of the Property and all amendments thereto.

Section 1.27. "Project" means the Property together with all buildings and other Improvements located thereon and all easements, rights and privileges appurtenant thereto.

Section 1.28. "Project Documents" means this Declaration and the Articles, Bylaws, Association Rules, Architectural Committee Rules, and Stormwater Covenant, as the same may be amended, restated, or supplemented from time to time.

Section 1.29. "Purchaser" means any person other than a Declarant or a Designated Builder, who by means of a voluntary transfer becomes the Owner of a Lot except for an Owner who purchases a Lot and then leases it to a Declarant or Designated Builder for use as a model in connection with the sale of other Lots.

Section 1.30. "Residential Unit" means any building situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

Section 1.31. "Residence" means a building, house or dwelling unit used as a residence, including any appurtenant garage or storage area.

Section 1.32. "Residential Use" means the occupation or use of a Residence in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

Section 1.33. "Stormwater Covenant" means any document between or among the Declarant, the Association, and a governmental authority relating to Stormwater Control Facilities or the handling of stormwater in the Subdivision, and includes all amendments and supplements thereto.

Section 1.34. "Stormwater Control Measures" or "Stormwater Control Facilities" is defined herein and in any Stormwater Covenant as one or more of the following devices and measures, together with associated private drainage easements utilized for conveying stormwater (however identified on a plat, map or in a recorded document) that serves more than one (1) Lot or parts of more than one (1) Lot in the Property and which are located outside of public street rights-of-way and drainage easements accepted into public use by the County, including, but not limited to, conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wetponds, dry detention basins, wetlands, permanently protected undisturbed open space areas (and similarly designated areas shown on any recorded plat of the Properties), bio-retention areas, retention or detention ponds, stream buffers, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Property. Private drainage easements, however identified on a recorded plat or recorded map or in a recorded document, that serve more than one (1) Lot in the Property are deemed to be dedicated to the Association for the benefit of the Properties or applicable portions thereof.

Except as otherwise provided herein, Stormwater Control Facilities are part of the Common Area, and maintenance of Stormwater Control Facilities is a Common Expense. References in the Declaration to stormwater management include all applicable Stormwater Control Facilities and Stormwater Covenants.

Section 1.35. "Supplemental Declaration" means a supplement to this Declaration which creates a sub-association, subjects additional property to the provisions of this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.

Section 1.36. "Total Association Vote" means the votes attributable to the entire membership of the Association (including the votes of Declarant) as of the record date for such action, but specifically excluding the votes of any Owners whose voting rights have been suspended as provided herein, whether or not such Members are present or represented at the meeting, if any, where such votes are to be cast. If, for example, and without limitation, two-thirds (2/3) of the Total Association Vote is required to approve a matter, such matter must receive more than two-thirds (2/3) of the votes attributable to all existing Members of the Association as of the record date for such action (and excluding the votes of any Owners whose voting rights have been suspended as provided herein), whether or not such members are present or represented at the meeting, if any, where such votes are to be cast.

Section 1.37. "Visible from Neighboring Property" or "visible from neighboring property" means that an object is or would be visible to a person six feet (6') tall standing on a neighboring lot, neighboring Common Area, or street at an elevation not greater than the elevation at the base of the object being viewed.

## ARTICLE II PLAN OF DEVELOPMENT

Section 2.1. Property Initially Subject to the Declaration. This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general plan for the development and use of the Property and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and such shall be deemed to be conveyed or encumbered with its

respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

ARTICLE III  
THE ASSOCIATION; RIGHTS AND DUTIES,  
MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Rights, Powers and Duties. The Association shall be a non-profit Georgia corporation charged with the duties and invested with the powers prescribed by the Georgia Nonprofit Corporation Code (O.C.G.A. Section 14-3-101, *et seq.*) or other applicable law and set forth in the Project Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in the Project Documents. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. A copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

Section 3.2. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint in accordance with this Declaration, the Articles and the Bylaws. Until termination of the Class B membership, Declarant shall have the right to appoint and remove members of the Board and officers of the Association. After termination of the Class B membership, the Members shall elect the Board as provided in the Bylaws and the Board shall appoint the officers as provided in the Bylaws.

Section 3.3. Association Rules. The Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations, provided, however, that such Association Rules shall not be effective at any time that Declarant owns any Lot unless (i) such Association Rules have been approved by Declarant in writing or (ii) the Class B Membership still exists. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner except that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 3.4. Architectural Committee. The Board shall establish an Architectural Committee consisting of not less than three (3) members to regulate the external design, appearance and use of the Property and to perform such other functions and duties as may be imposed upon it by this Declaration or the Board. So long as the Declarant owns any Lot, the Declarant shall have the right to appoint and remove members of the Architectural Committee. At such time as the Declarant no longer owns any Lot, the Board shall have the right to appoint and remove members of the Architectural Committee.

Section 3.5. Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

Section 3.6. Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such Purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

Section 3.7. Classes of Members. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of each Declarant and each Designated Builder until the termination of the Class B membership. Each Class A member shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B members shall be each Declarant and each Designated Builder. Each Class B member shall be entitled to ten (10) votes for each Lot owned by such member. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When one hundred percent (100%) of the Lots have been improved with Residential Units and conveyed to Purchasers for occupancy of such Residential Units; or

(ii) When each Declarant and each Designated Builder notifies the Association in writing that it relinquishes its Class B membership.

Section 3.8. Joint Ownership. When more than one person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

Section 3.9. Corporate Ownership. In the event any Lot is owned by a corporation, partnership, limited liability company, or other association, the corporation, partnership, limited liability company or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the

power to vote said membership, and in the absence of such designation and until such designation is made, the president, general partner, manager, managing member, or chief executive officer of such corporation, partnership, limited liability company or association shall have the power to vote the membership.

Section 3.10. Suspension of Membership Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Project Documents for a period of thirty (30) days or has violated any other provision of the Project Documents, said Owner's right to vote and right to use and enjoy the Common Area as a Member of the Association may be suspended for each infraction of the Project Documents after Notice and Opportunity for Hearing, and if suspended after Notice and Opportunity for Hearing shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current and any violations cured.

Section 3.11. Fines. The Association, acting through its Board of Directors, shall have the right to adopt a schedule of fines for violation of any provision of the Project Documents by any Owner or such Owner's licensees and invitees. No fine shall be imposed unless the Owner is provided Notice and Opportunity for Hearing. If it is decided after Notice and Opportunity for Hearing that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation without further hearing for each day more than five (5) days after the decision that the violation occurs. All fines shall constitute a lien on all lots owned by the Owner and shall be paid within thirty (30) days following imposition. Failure to pay any fine shall subject the Owner to the same potential penalties and enforcement as failure to pay any assessments under Article IV.

Section 3.12. Limitation on Claims. No claim arising against Declarant or any officer, director, member, manager, employee or other representative of Declarant, including without limitation any claims arising from Declarant's exercise of any right arising from Declarant's Class B membership or arising from any action or inaction by any person in such person's capacity as an officer, director, member or manager of the Association, shall be asserted by the Association more than six months following the later of termination of the Class B membership or the termination of such person's service as an officer or director of the Association. All claims that are not filed in a proper court within the foregoing time period shall be deemed forever waived and released. This section shall not be subject to amendment without the written approval of the Declarant.

#### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. Apart from Declarant, each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association: (a) annual assessments; (b) specific assessments; (c) special assessments; and (d) any applicable neighborhood assessments. All assessments, together with late

charges (in an amount equal to the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the assessment or installment not paid when due), interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due) and costs of collection, including, without limitation, reasonable attorneys' fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and a continuing lien in favor of the Association on the Lot against which each assessment is made. As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of assessments and fees arising hereunder shall also include the costs of collection, including, without limitation, reasonable attorneys' fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2).

The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each assessment, together with late charges, interest and costs of collection, including, without limitation, reasonable attorneys' fees actually incurred, shall also be the personal obligation of the Person who was the Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner 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 the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise be exempt from liability for the assessments provided for herein for any reason, including, by way of illustration and not limitation, the following: (a) abandonment of the Lot; (b) nonuse of the Common Area; (c) the Association's failure to perform its obligations required under the Declaration; or (d) inconvenience or discomfort arising out of the Association's performance of its duties. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

Section 4.2. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for payment of Common Expenses, including, without limitation (i) the upkeep, maintenance and improvement of the Common Area; (ii) maintenance, repair, replacement, and operation of rights-of-way and easements within or immediately adjacent to the Project (e.g. landscaping and sidewalks within the right-of-way of adjoining streets) to the extent that such actions are required by government entities or deemed appropriate by the Board, (iii) promoting the recreation, health, safety and welfare of the Owners and other lawful occupants of Lots within the Property, (iv) payment of property taxes for the Common Area; (v) insurance premiums; (vi) legal and accounting fees; (vii) management fees; (viii) charges for utilities and other services provided by the Association, if any; (ix) costs to maintain the entrance features, including any electricity, landscaping and irrigation expenses associated therewith;

(x) the performance and exercise by the Association of its rights, duties and obligations under the Project Documents, and (xi) maintaining any Stormwater Control Facilities located on portions of Common Areas to the standard required by the governmental entity or agency having jurisdiction over such areas. Notwithstanding the foregoing, neighborhood assessments shall be used only for the benefit of the neighborhood paying such assessments, shall not be used for any purpose that is covered by annual assessments or special assessments in other areas of the Property, and shall be accounted for separately from annual and special assessments.

#### Section 4.3. Annual Assessment.

(A) For each fiscal year of the Association commencing upon the first to occur of (i) transfer to and acceptance for maintenance by the Association of any Common Area or (ii) conveyance of a Lot to a Purchaser, the Board shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board believes to be required during the ensuing fiscal year to pay all Common Expenses including, but not limited to (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Area and those parts of the Lots, if any, which the Association has the responsibility of maintaining, repairing or replacing under the Project Documents, (ii) the cost of wages, materials, insurance premiums, services, supplies and maintenance or repair of the Common Area and for the general operation and administration of the Association, (iii) the amount required to render to Owners all services required to be rendered by the Association under the Project Documents, and (iv) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacement. The Board shall send written notice of a summary of the proposed budget as well as the amount of the payment due by each Owner within thirty (30) days after the adoption by the Board of such budget. The failure of the Board to send, or of a Member to receive, any budget notice shall not relieve any Member of the obligation to pay Assessments.

(B) For each fiscal year of the Association commencing upon the first to occur of (i) transfer to and acceptance for maintenance by the Association of any Common Area or (ii) conveyance of a Lot to a Purchaser, the total amount of the estimated Common Expenses as established by the approved budget shall be assessed by the Board. Except to the extent that this Declaration expressly provides for (a) neighborhood assessments only on Lots benefiting from such neighborhood assessments, (b) specific assessments, (c) reduced assessments, or (d) exemptions from assessments, all assessments shall be equal on all Lots.

(C) A Designated Builder shall be obligated to pay only twenty-five percent (25%) of the annual assessment attributable to a Lot for each fiscal year of the Association commencing upon the conveyance of the first Lot to a Purchaser, and continuing until the earliest of (i) the date on which a certificate of occupancy or similar permit is issued by the appropriate governmental authority for the residential unit on the Lot, (ii) six (6) months from the date on which a building permit is issued by the appropriate governmental authority for construction of a Residential Unit on the Lot, or (iii) two (2) years after the Lot was conveyed to the Designated Builder by the Declarant.

If a Lot ceases to qualify for the reduced twenty-five percent (25%) rate of assessment during the period to which an annual assessment is attributable, the annual assessment shall be prorated between the applicable rates on the basis of the number of days in the assessment period that the Lot qualified for each rate.

(D) The Declarant shall be exempt from the payment of all assessments under this Article IV. If a Lot ceases to be owned by Declarant and therefore becomes subject to assessment during the period to which an annual assessment is attributable, the assessment shall be prorated based on the number of days in the assessment period that the Lot is not owned by Declarant.

(E) During the period of Declarant control, Declarant may, but shall have no obligation to: (i) advance funds for contributions of services or materials or combination of services and materials, rather than money, or a combination of these, to the Association sufficient to satisfy the Operating Deficit, if any, in any fiscal year; or (b) cause the Association to borrow such an amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Project, however no loan shall be secured by any portion of the Common Areas. In the event that the Declarant elects to subsidize the Association in the form of cash, then within Declarant's discretion, such contribution may be structured in the form of a loan from the Declarant to the Association and evidenced by a promissory note from the Association in favor of the Declarant.

(F) The Board shall adopt a proposed budget and give notice of the estimated annual assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year of the Association, but the failure to give such notice shall not affect the validity of the annual assessment established by the Board nor relieve any Owner from its obligation to pay the annual assessment.

(G) If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all expenses of the Association for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the annual assessment for that fiscal year and the revised annual assessment shall commence on the date designated by the Board.

Section 4.4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, a special assessment applicable to that fiscal year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures and personal Property related thereto, or for any other lawful Association purpose, provided that any such special assessment shall have the assent of Members having at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. Special assessments shall be levied at a uniform rate for all Lots.

Section 4.5. Notice and Quorum for Any Action Authorized Under Section 4.4. Written notice of any meeting called for the purpose of obtaining the

consent of the Members for any action for which the consent of the Members is required under Section 4.4 shall be sent to all Members no less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.6. Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. The failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. By way of explanation and not limitation, the following shall constitute specific assessments: (a) fines levied pursuant to this Declaration; (b) the working capital contribution as provided in Section 4.15 hereof; and (c) the cost of maintenance performed by the Association for which an Owner is responsible shall be specific assessments.

In addition to the foregoing, the Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; (b) expenses of the Association which benefit all Lots, but do not provide an equal benefit to all Lots may be specifically assessed equitably among all Lots according to the benefit received; and (c) expenses of the Association which are attributable to or incurred as a result of the conduct of an Owner or the Occupants, guests, tenants, invitees or licensees of the Owner may be specifically assessed against the Lot of such Owner.

Section 4.7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board may require that the annual assessment be paid in installments and in such event the Board shall establish the due dates for each installment.

Section 4.8. Effect of Non-payment of Assessments; Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer or conveyance; and such Owner and

such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves.

Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge (in an amount equal to the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the assessment or installment not paid when due) and interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due, and the entire amount of such assessments, including the portion thereof which would otherwise be payable in installments, may be declared by the Board to be immediately due and payable in full to the Association. As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of assessments and fees arising hereunder shall also include costs of collection, including, without limitation, reasonable attorneys' fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2). The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a claim of lien with the Office of the Clerk of Superior Court of Cherokee County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments.

Each Owner, by acceptance of a deed, vests in the Association 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 lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of use and enjoyment in and to the Common Area, and the right to receive and enjoy such services and other benefits as may then be provided by the Association, if any. Any suspension shall not affect an Owner's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such Lot in favor of the Association.

Section 4.9. Subordination of the Lien to Mortgages. Notwithstanding anything to the contrary in this Declaration or any other document related thereto or executed in connection therewith, the lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage placed on a Lot, if, but only if, all assessments and charges with respect to such Lot authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the foreclosure of such Mortgage. Such subordination is merely a subordination and shall not relieve an Owner of the personal obligation to pay all assessments coming due during

such period of ownership; shall not relieve such Lot from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's transferee by foreclosure); and no sale or transfer of such Lot to the Mortgagee or to any other Person pursuant to a foreclosure, or pursuant to any other proceeding in lieu of foreclosure, shall relieve any existing or previous Owner of such Lot of any personal obligation or relieve such Lot or any Owner of such Lot from liability for any assessment authorized hereunder that becomes due after such sale and transfer.

Section 4.10. Exemption of Owner. No Owner of a Lot may exempt himself from liability for Assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities, abandonment of the Lot, the Association's failure to perform its obligations under the Declaration, or inconvenience or discomfort arising out of the Association's performance of its duties.

Section 4.11. Estoppel Letter. 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 or its managing agent setting forth the amount of assessments past due and unpaid, including any late charges, interest, fines, or other charges against that Lot. Such request shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. The Association shall, within five (5) business days after receiving a written request therefor, certify to the amount of any unpaid assessments constituting a lien on a specified Lot. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Lot shall be binding upon the Association. The Association may charge a reasonable fee as may be permitted by law as a prerequisite to the issuance of such statement. It is the intent of this provision to comply with O.C.G.A. Section 44-14-15(c), as amended.

Section 4.12. Maintenance of Reserve Fund. Out of the annual assessments and other income, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area.

Section 4.13. No Offsets. All Assessments and other amounts payable to the Association shall be payable in accordance with the provisions of the Project Documents, and no offsets against such Assessments or other amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents.

Section 4.14. Stormwater Assessments. Notwithstanding anything to the contrary in the Declaration, and in keeping with the obligation of the Association to be responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to recover the costs of such maintenance, repair, or replacement, (i) if the Board determines for any fiscal year that

the Association has insufficient funds to pay a Common Expense pursuant to any Stormwater Covenant, and (ii) the Board determines that there are not sufficient reserve funds available both to pay that Common Expense and continue to have adequate reserve funds, and (iii) for that fiscal year the Declarant has paid Subsidy Amounts, then the Board, without any vote of the Members, may levy a "stormwater assessment" in an amount sufficient to pay for that Common Expense owed pursuant to the applicable Stormwater Covenant. The amount of such stormwater assessment shall be determined and assessed against all Lots. The payment due dates for such stormwater assessment shall be as determined by the Board and shall be enforceable against Owners and their Lots in the same manner as annual assessments. Provided, however, during the period of Declarant control, no such stormwater assessment shall be valid unless the same shall have been consented to in writing by the Declarant. Further provided, except as may be necessary to account for different Stormwater Control Measures and/or Stormwater Covenants or other agreements related to stormwater applicable to different Lots as allowed in the governing documents or under legal requirements, all stormwater assessments shall be the same for all Lots. Any stormwater assessment for excess expenses is in addition to all other assessments provided for herein.

Section 4.15. Working Capital Contribution. Upon the sale of each and every Lot, to a Purchaser, a working capital contribution in an amount determined by the Board, from time to time, shall be collected from the new Purchaser at the closing of such transaction and disbursed to the Association; or if not collected at closing, shall be paid immediately upon demand to the Association. Such working capital contributions may be used by the Association for any purpose which provides a direct benefit to the Project, including without limitation, for the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions hereof.

Section 4.16. Neighborhood Assessments. The Board of Directors shall have the right to impose neighborhood assessments against Lots in any specific area of the Property in order to provide for the repair, replacement, operation and maintenance of Common Areas within such area that are different from or in addition to the types of Common Areas in the balance of the Property and that are designed to benefit less than all of the Property (e.g. private streets, separate entryways or gates, enhanced landscaping, community centers, swimming pools). Any such determination by the Board shall be made in a writing specifying the purposes of the neighborhood assessment and the Lots subject thereto. Any such determination by the Board may also include an additional imposition on such Lots pursuant to Section 4.12 in order to fund a reserve account for the specific improvements intended to be maintained by the neighborhood assessment.

Section 4.17. Sanitation and Refuse Collection. The Association shall have the right, at its discretion and from time to time, to negotiate and execute one or more contracts ("Trash Collection Agreement(s)") with a sanitation provider (or providers) of its choice, for the collection and removal of garbage, trash, recycling materials, and other refuse within the Property and Project. In addition to the annual assessments included within Article IV, the Association may include in the annual assessment or levy in any assessment year a special assessment applicable to that year

(and the same shall be charged and collected on a monthly, quarterly or yearly basis as determined by the Board) for the purpose of paying the cost of providing collection and removal of garbage, trash, recycling materials, and other refuse within the Property and Project. Each Owner of a Lot shall be obligated to use the sanitation provider(s) selected by the Association for the collection and removal of garbage, trash, recycling materials, and refuse from such Owner's Lot and agrees to comply with the terms, provisions and requirements of the Trash Collection Agreement(s). Each Owner therefore acknowledges and agrees that each Lot shall be subject to an assessment, either as part of the annual assessment or in addition to and apart from the annual and any other special assessments, for the purpose of paying each Lot's pro rata share of trash collection service provided to the Project. If directed by the Association, each Owner shall contract directly with the selected sanitation provider(s) for its services and shall pay the cost of such services directly to the sanitation provider(s).

Section 4.18. Special Assessment for Cable Service. The Association shall have the right, at its discretion and from time to time, to negotiate and execute one or more contracts ("Cable Agreement(s)") with a cable television provider (or providers) of its choice, for the purpose of providing cable television services to the Property. In addition to the annual assessments included within Article IV, the Association may include in the annual assessment or levy in any assessment year a special assessment applicable to that year (and the same shall be charged and collected on a monthly, quarterly or yearly basis as determined by the Board) for the purpose of paying the cost of providing cable television service to the Property. Each Owner acknowledges that the Property is intended to have cable television availability and that the condition of availability may be such that each Lot must be included in the service plan. Each Owner therefore acknowledges and agrees that each Lot shall be subject to an assessment, either as part of the annual assessment or in addition to and apart from the annual and any other special assessments, for the purpose of paying each Lot's pro rata share of basic cable service provided to the Property regardless of whether or not such Owner subscribes or elects to receive basic cable service. The assessment authorized and provided for herein shall apply only to such service as is defined as "basic" by the provider and any additional services that constitute "expanded basic," "upgrades" or "enhanced" services shall be subscribed for and paid by each Owner on an individual basis.

Section 4.19. Declarant Audit Right. Following the termination of the Class B membership and so long as Declarant owns any lot, the Declarant shall have the right to audit the books and records of the Association.

Section 4.20. Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

## ARTICLE V USE RESTRICTIONS

Section 5.1. Residential Use. Except as otherwise provided herein, all Lots shall be improved and used only for Residential Use. Leasing of a Lot for residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing at the Lot may conduct business activities within the Residence located thereon so long as the business activity: (a) does not otherwise violate the provisions of the Declaration, Bylaws or any rules and regulations of the Association; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Project; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Project; (g) does not constitute a nuisance or a hazardous or offensive use; (h) does not threaten the security or safety of other residents of the Project; and (i) does not involve door-to-door solicitation within the Project, all as may be determined in each case in the sole discretion of the Board of Directors.

The Board may issue rules regarding permitted business activities. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity. Notwithstanding the foregoing, the Declarant may use the lots for such facilities as in its sole opinion may be reasonably required, convenient or incidental to the construction and sale of residential units, including, without limitation, a business office, storage areas, construction yards, signs, a model site or sites, and a display and sales office.

Section 5.2. Building Type and Size. No building shall be constructed or permitted to remain on any lot other than one detached Residence. Unless otherwise approved in writing by the Architectural Committee, all buildings shall be of new construction and no prefabricated structure shall be placed upon any lot if Visible from Neighboring Property; storage structures and/or a sales office may be maintained upon any lot or lots by the Declarant or a building contractor for the purpose of erecting and selling dwellings on the Property or for the purpose of constructing improvements on the Common Area, but such temporary structures shall be removed upon completion of construction or selling of a dwelling or the Common Area, whichever is later. No structure of a temporary character, trailer, tent, shack, garage, barn or other out buildings shall be used on any lot at any time as a residence, either temporarily or permanently. Declarant and contractors for Declarant shall have the right to place temporary construction trailers and store materials on the Common Areas for the purpose of constructing improvements on the Common Areas.

Section 5.3. Signs. No sign of any kind which is Visible from Neighboring Property shall be installed or displayed on any Lot or Common Area without the prior written approval of the Association as to size, color, design, message content, number and location except: (i) such signs as may be used by Declarant in connection with the development and sale of Lots and/or Residential Units or Common Area in the Project; (ii) such signs as may be required by legal proceedings, or which by law, may not be prohibited; (iii) one temporary sign per Lot no larger than 30" x 24" used exclusively to advertise the Lot for sale; (iv) a maximum of one political sign with maximum dimensions of 24 inches by 24 inches (or such greater number and/or greater size of political signs permitted by ordinances if the governing body regulates the size and number of political signs on residential property) may be placed on a Lot by the Owner of that Lot; provided, however, that no political signs may be displayed pursuant to this Section 5.3 earlier than 45 days before an election day or more than 7 days after an election day, or (v) such signs as may be desired by Declarant or required for traffic control, construction job identification, builder identification, and subdivision identification as are in conformance with governmental requirements. All other signs must be approved in advance in writing by the Architectural Committee as provided above. All signs must conform to applicable ordinances and other governmental requirements. In no event shall any signs advertising residential property for lease or rent be displayed within 24 months after the initial conveyance of a Lot with a Residential Unit constructed thereon to an Owner from a Declarant or a Designated Builder.

Section 5.4. Noxious and Offensive Activity. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Lot. No property within the Project shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Project, nor shall anything be done tending to cause embarrassment or nuisance to any Person using any property within the Project. No plants, animals, device or thing of any sort shall be maintained in the Project whose activities or existence is in any way noxious, dangerous, unsightly or of a nature as may diminish or destroy the enjoyment of the Project by other Owners and Occupants. Without limiting the generality of the foregoing, no exterior speaker, horn, whistle, siren, bell, amplifier or other sound device (except such devices as may be used exclusively for security purposes), screaming, shouting, fighting, raucous behavior, insobriety, playing loud music or television, use of any alarm, equipment, or device, mechanical or otherwise which creates or produces excessively loud sounds or any vibrations, or any conduct which creates any noxious or offensive odors outside a home shall be permitted, located, used, placed, installed or maintained upon any Lot, or any portion thereof. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board. The provisions of this section shall not apply to any activity of Declarant or any Designated Builder or their respective

employees, agents, or contractors during the course of construction activities or sales activities upon or about the Property.

Section 5.5. Vehicles: Parking.

Section 5.3.1. General. Vehicles shall be parked only in appropriate parking spaces serving the Lot or other designated parking areas established by the Board, if any. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking spaces serving the Lot" shall refer to the number of garage parking spaces and if the Owners and Occupants of a Lot have more vehicles than the number of garage parking spaces, those excess vehicles which are an Owner's or Occupant's primary means of transportation on a regular basis may be parked on the driveway located on such Lot; provided, however, no vehicle parked on a driveway shall encroach onto any portion of the sidewalk, street or landscaped or grassy area. All parking shall be further subject to such reasonable rules and regulations as the Board may adopt from time to time.

Section 5.3.2. Garages. All homes shall contain a garage; carports shall not be permitted. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. Garages shall be used primarily for the parking of vehicles and the storage of normal household supplies and materials. Garages shall not be converted to additional living space unless the same has been approved in accordance with Section 5.20 hereof.

Section 5.3.3. Disabled and Stored Vehicles. No vehicle may be left upon any portion of the Project that is Visible from Neighboring Property, except in an enclosed garage or other area designated by the Board, if any, for a period of more than five (5) days if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle may be removed from the Project by the Board of Directors or the appropriate authority of Cherokee County. No towed vehicle, boat, personal watercraft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go cart, golf cart, commercial vehicle, camper, bus or mobile home shall be regularly stored or temporarily kept in any portion of the Project that is Visible from Neighboring Property, except if kept in an enclosed garage or other area designated by the Board, if any, for periods longer than forty-eight (48) hours (the temporary removal of such vehicle from the Project shall not be sufficient to establish compliance with the forty-eight (48) consecutive hour provision provided for herein). Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored in an area not Visible from Neighboring Property upon removal. No eighteen wheel trucks or the cabs of such trucks or trucks with a load capacity in excess of three-quarters of a ton shall be parked, kept or stored within the Project except as may be reasonably necessary to provide service to or delivery within the Project or as otherwise permitted by the Board of Directors.

Section 5.3.4. Commercial Vehicles. The term "commercial vehicles" as used in this paragraph, shall include, without limitation, any vehicle which bears any indicia of commercial use, including, but not limited to, writing, logos, ladders, ladder racks, vehicles displaying signage of a commercial or business nature or vehicles which are not primarily used for the transportation of passengers. Commercial vehicles shall not be permitted in the Project, except if kept in an enclosed garage or otherwise not Visible from Neighboring Property; provided however, construction, service, and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service to or make a delivery within the Project.

Section 5.3.5. Remedies of the Association for Noncompliance. If any vehicle is parked on any portion of the Common Area in violation of this Section or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity that will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within twelve (12) months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the Owner or user of the vehicle. Notwithstanding anything herein to the contrary, if a vehicle parked on the Common Area, is blocking another vehicle, is obstructing the flow of traffic, is parked on any grassy or landscaped area, is parked in a fire truck turnaround or fire lane, or otherwise creates a hazardous condition, no notice shall be required and the Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this Section, the Declarant, the Association and their respective affiliates, directors, officers, employees or agents shall not be liable to any Person for any claim of damage resulting from the towing activity. The Board of Directors may exercise any and all remedies available for a violation of this Section, including, without limitation, the right to levy and collect fines against non-complying Owners or Occupants, which remedies shall be in addition to not in lieu of its authority to remove the violating vehicle.

Section 5.3.6. Declarant and Designated Builder Exemption. Notwithstanding the foregoing, the Declarant and Designated Builder, and their respective agents, subcontractors and assigns shall have the right, during regular business hours, to park vehicles on any and all streets within the Project as needed in order to facilitate the construction, development and build out of the Project.

Section 5.6. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use or maintenance of improvements constructed by the Declarant or approved by the Architectural Committee. The provisions of this section shall not apply to any activity of Declarant or any Designated Builder or their respective employees, agents, or contractors during the course of construction activities or sales activities upon or about the Property.

Section 5.7. Restrictions and Further Subdivision. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Architectural Committee. Declarant, however, hereby expressly reserves the right to subdivide and/or revise and re-record the subdivision plat of any Lot(s), and to approve the revision and re-recording of any plat of any Lot(s) owned by any builder or developer, including, but not limited to, changing any Lot to Common Area or creating a public or private street over any Lot or property that was formerly a Lot, without the consent of any Person, other than the Owner(s) of such property.

Section 5.8. Windows. Within thirty (30) days of occupancy of a Residential Unit each Owner shall install permanent suitable window treatments on all windows facing the street. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any windows.

Section 5.9. HVAC. Except as initially installed by the Declarant or a Designated Builder and except for replacement units as described below, no heating or air conditioning unit shall be placed, constructed or maintained upon any Lot without the prior written approval of the Architectural Committee. In the event a heating or air conditioning unit needs to be replaced, an Owner may install a replacement unit in the same or substantially same location as the original unit without the approval of the Architectural Committee.

Section 5.10. Garages and Driveways. The interior of all garages situated on any lot shall be maintained in a neat and clean condition. Garages shall be used only for the parking of vehicles and the storage of normal household supplies and materials and shall not be used for or converted to living quarters or recreational activities or the initial construction thereof altered without the prior written approval of the Architectural Committee. Garage doors shall be left open only as needed for ingress and egress.

Section 5.11. Installation of Landscaping.

(A) Within one hundred twenty (120) days after becoming the Owner of a Lot, the Owner shall install landscaping and irrigation improvements in compliance with the Architectural Committee Rules and other applicable requirements set forth in the applicable zoning ordinances in that portion of his Lot which is between the street(s) adjacent to his Lot and the exterior wall of his Residential Unit or any wall separating the side or back yard of the Lot from the front yard of the Lot. Any Lot that has non-solid fencing (e.g. wrought iron rather than a solid wall) on any boundary of its rear yard shall be completely landscaped and irrigated (front, rear, and side yards) by the Owner of such Lot in compliance with Architectural Committee Rules and other applicable requirements set forth in the applicable zoning ordinances within one hundred twenty (120) days of becoming the Owner of the Lot. The landscaping and irrigation improvements shall be installed in accordance with plans approved in writing by the Architectural Committee. Prior to installation of such landscaping, the Owner shall maintain the portions of such Lot required to be landscaped in a weed-free condition.

(B) If any Owner fails to landscape any portion of his Lot within the time provided for in this section, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to install such landscaping improvements as the Association deems appropriate, and the cost of any such installation shall be assessed against the Lot of the violating Owner as a specific assessment. Any amounts payable by an Owner to the Association pursuant to this section shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of assessments.

(C) This Section 5.11 shall not apply to Declarant or any Builder with respect to any Lot or any other property that has not been conveyed to an Owner with a Residence already constructed thereon, except that this Section 5.11 shall apply upon commencement of residential occupancy of any Lot containing a Residence.

Section 5.12. Declarant's and Designated Builder Exemption. Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by a Declarant (or its designated agents and contractors) or a Designated Builder (subject to approval by Declarant) during the period of development, construction, performance of warranty work, sales and marketing on the Property, or any production homes, model homes and sales offices and parking incidental thereto, construction trailers, landscaping or signs deemed necessary or convenient by a Declarant or a Designated Builder (subject to the approval of Declarant), in their sole discretion, to the development, construction, sale and marketing of property within the Property. Any actions taken by a Designated Builder pursuant to this section shall require the prior approval of Declarant, which shall not be unreasonably withheld. The Association shall take no action that would interfere with access to or use of model homes; without limitation of the foregoing, the Association shall have no right to close private streets to access by members of the public desiring access to model homes.

Section 5.13. Leasing Restrictions. All tenants shall be subject to the terms and conditions of this Declaration and the Project Documents. Each Owner shall provide the tenants with copies of the Project Documents and shall cause the tenants or other occupants to comply with this Declaration and the Project Documents and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such tenants or occupants, notwithstanding the fact that such tenants or occupants are also fully liable for any violation of each and all of those documents. No sign that is Visible from Neighboring Property may be placed on a Lot or any other area within the Project indicating that a Lot is available for lease at any time during the 24 months after the initial conveyance of a Lot with a Residential Unit constructed thereon to an Owner from a Declarant or a Designated Builder (or by a trustee for the benefit of a Declarant or a Designated Builder). All leases shall be in writing. Lots may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. Unless otherwise provided by the Board of Directors, all leases shall have a minimum term of at least one (1) year. The provisions of this Section 5.13 shall not apply to any Declarant's or any Designated Builder's use of Lots owned by (or leased to)

a Declarant or a Designated Builder, as applicable, as a model home or for marketing purposes.

Section 5.14. Animals. No animals, insects, livestock, or poultry of any kind shall be raised, bred, or kept on or within any Lot or structure thereon except that dogs, cats or other common household pets may be kept on or within the lots, provided they are not kept, bred or maintained for any commercial purpose, or in unreasonable numbers as determined by the Architectural Committee. No dog runs, runners or exterior pens for animals that are Visible from Neighboring Property shall be erected or maintained on any Lot unless approved by the Architectural Committee. Dogs shall at all times when outside of a Residence be kept on a leash or otherwise under the physical control of a responsible person. All Owners must control their animals at all times, whether or not such Owner is present, in a manner that will prevent any animal from: (a) making noise at objectionable sound levels for extended periods of time, whether continuously or intermittently; (b) endangering the health or safety of other Owners, their families, guests or invitees or creating fear in other Owners as to the safety of themselves, their families, guests or invitees; or (c) otherwise constituting a nuisance or inconvenience to the Owner(s) or Occupant(s) of any other Lot; all of the foregoing as determined by the Association in its sole discretion.

All animals shall be registered, licensed and inoculated if and as required by law. Animal control authorities shall be permitted to enter the Project to patrol and remove unlicensed animals. Animal waste deposited in the Project must be removed by the owner of the animal or the person responsible for the animal. The Association may adopt reasonable rules and regulations designed to minimize damage and disturbance to other Owners and Occupants, including without limitation, regulations requiring damage deposits, waste removal, leash controls and noise controls. The Association may require that an Owner remove any animal that presents an actual threat to the health or safety of residents and require abatement of any nuisance or unreasonable source of annoyance. In the event that the Owner fails to remove an animal as provided herein, the Association shall have the right to institute legal action to have the animal removed and all costs associated therewith shall be a specific assessment against the Lot of such Owner.

Section 5.15. Drilling and Mining. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind, shall be permitted upon or in any lot nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted on any lot. No derrick or other structure designed for use in boring for or removing water, oil, natural gas or other minerals shall be erected, maintained or permitted upon any lot.

Section 5.16. Refuse. All refuse, including without limitation all animal wastes, shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Until removal from the Lots, refuse shall be placed in closed refuse containers with operable lids so that such containers are not open to the air. Refuse containers shall be kept clean, sanitary and free of noxious odors. Refuse containers and recycling bins shall be maintained so as to not be Visible from Neighboring Property,

except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection.

Section 5.17. Antennas and Satellite Dishes.

(A) This section applies to antennas, satellite television dishes, and other devices ("Receivers"), including any poles or masts ("Masts") for such Receivers, for the transmission or reception of television or radio signals or any other form of electromagnetic radiation.

(B) As of the date of recordation of this instrument, Receivers one meter or less in diameter are subject to the provisions of Title 47, Section 1.4000 of the Code of Federal Regulations ("Federal Regulations"). "Regulated Receivers" means Receivers subject to Federal Regulations as such regulations may be amended or modified in the future or subject to any other applicable federal, state or local law, ordinance or regulation ("Other Laws") that would render the restrictions in this section on Unregulated Receivers (hereinafter defined) invalid or unenforceable as to a particular Receiver. "Unregulated Receiver" means all Receivers that are not Regulated Receivers. Notwithstanding the foregoing, a Regulated Receiver having a Mast in excess of the size permitted under Federal Regulations or Other Laws for Regulated Receivers shall be treated as an Unregulated Receiver under this section.

(C) Unless approved in writing by the Architectural Committee, no Unregulated Receivers shall be permitted outdoors on any Lot, whether attached to a building or structure or on any Lot, unless approved in writing by the Architectural Committee, with such screening and fencing as such Committee may require. Unregulated Receivers must be ground mounted and not Visible from Neighboring Property.

(D) Regulated Receivers shall be subject to the following requirements:

(i) If permitted by applicable Federal Regulations or Other Laws, no Regulated Receiver shall be permitted outdoors on any Lot, whether attached to a building or structure or on any Lot, unless approved in writing by the Architectural Committee, with such screening and fencing as such Committee may require. If such restriction is not so permitted, the provisions of subsections (ii) and (iii) below shall apply.

(ii) A Regulated Receiver and any required Mast shall be placed so as not to be Visible from Neighboring Property if such placement will not (a) unreasonably delay or prevent installation, maintenance or use of the Regulated Receiver, (b) unreasonably increase the cost of installation, maintenance or use of the Regulated Receiver, or (c) preclude the reception of an acceptable quality signal.

(iii) Regulated Receivers and any required Masts shall be placed on Lots only in accordance with the following descending order of locations, with Owners required to use the first available location that does not violate the requirements

of parts (a) through (c) in subsection (ii) above: (i) a location in the back yard of the Lot where the Receiver will be screened from view by landscaping or other improvements; (2) an unscreened location in the backyard of the Lot; (3) on the roof, but completely below the highest point on the roofline; (4) a location in the side yard of the Lot where the Receiver and any pole or mast will be screened from view by landscaping or other improvements; (5) on the rear roof above the roofline; (6) an unscreened location in the side yard; and (7) a location in the front yard of the Lot where the Receiver will be screened from view by landscaping or other improvements.

Notwithstanding the foregoing order of locations, if a location stated in the above list allows a Receiver to be placed so as not to be Visible from Neighboring Property, such location shall be used for the Receiver rather than any higher-listed location at which a Receiver will be Visible from Neighboring Property, provided that placement in such non-visible location will not violate the requirements of parts (a) through (c) in subsection (ii) above.

(iv) Owners shall install and maintain landscaping or other improvements ("Screening") around Receivers and Masts to screen items that would otherwise be Visible from Neighboring Property unless such requirement would violate the requirements of parts (a) through (c) in subsection (ii) above, if an Owner is not required to install and maintain Screening due to an unreasonable delay in installation of the Receiver that such Screening would cause, the Owner shall install such screening within 30 (thirty) days following installation of the Receiver and shall thereafter maintain such Screening, unless such Screening installation or maintenance will violate the provisions of parts (a) through (c) in subsection (ii) above. If an Owner is not required to install Screening due to an unreasonable increase in the cost of installing the Receiver caused by the cost of such Screening, the Association shall have the right, at the option of the Association, to enter onto the Lot and install such Screening and, in such event, the Owner shall maintain the Screening following installation, unless such Screening installation or maintenance will violate the provisions of parts (a) through (c) in subsection (ii) above.

The provisions of this section are severable from each other; the invalidity or unenforceability of any provision or portion of this section shall not invalidate or render unenforceable any other provisions or portions of this section, and all such other provisions or portions shall remain valid and enforceable. The invalidity or unenforceability of any provisions or portions of this section to a particular type of Receiver or Mast or to a particular Receiver or Mast on a particular Lot shall not invalidate or render unenforceable such provisions or portions regarding other Receivers or Masts on other Lots.

Section 5.18. Utility Services. All lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Architectural Committee. Temporary power or telephone structures

incident to construction activities approved by the Architectural Committee are permitted.

Section 5.19. Diseases and Insects. No Owner or resident shall permit any thing or condition to exist upon a lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 5.20. Architectural Control.

(A) No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee. Each Owner altering any grading or drainage on a Lot shall ensure that such alterations comply with all requirements of any grading or drainage plan approved by any governmental entity having jurisdiction over the Property and that such alterations do not alter or impede the flow of storm water from the manner existing prior to such alterations; approval of plans or proposed improvements by the Architectural Committee shall not constitute a waiver of this requirement or a warranty that such plans or improvements are consistent with this requirement or any other requirement of this Declaration, the Association Rules or Architectural Committee Rules, any governmental requirement or construction industry standard.

(B) No Improvements shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

(C) No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any Lot, or the Improvements located thereon, shall be made or done without the prior written approval of the Architectural Committee.

(D) Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of the Improvement, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change or replacement of any Improvement which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this section will be deemed to have been complied with by the Owner who had requested approval of such plans.

(E) The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of

any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

(F) Upon receipt of written approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the construction, installation, addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practical and within such time as may be prescribed in writing by the Architectural Committee.

(G) The approval of the Architectural Committee required by this section shall be in addition to, and not in lieu of, any approvals, consents or permits required under the ordinances or rules and regulations of any county or municipality having jurisdiction over the Project.

(H) The provisions of this section shall not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant.

(I) In no event shall the Association, the Architectural Committee or any member of the Architectural Committee have any liability for any action or inaction by the Architectural Committee or its members, including without limitation any approval or disapproval of plans by the Architectural Committee. The sole remedy for an Owner asserting that the Architectural Committee has improperly withheld approval or has improperly granted approval shall be an action to compel the Architectural Committee to take appropriate action. In no event shall any damages of any nature be awarded against the Association, the Architectural Committee or any member of the Architectural Committee of any nature arising from any action or inaction described in this Section 5.20.

(J) Each Owner is strongly advised to consult with independent architects and engineers to ensure that all improvements or alterations made by such Owner are safe and in compliance with applicable governmental requirements. No approval by the Architectural Committee shall constitute a guaranty or warranty by the Association, the Architectural Committee or any member of the Architectural Committee that the matters approved will comply with this Declaration, any Association Rules or Architectural Committee Rules, or any applicable governmental requirements or that any plans or improvements are safe or properly designed. The Owner constructing or altering any improvements shall indemnify, defend and hold the Association harmless from (i) any claims or damages of any nature arising from such improvements or alterations or any approval thereof by the Architectural Committee and (ii) any claim that the Association, the Architectural Committee or any member of the Architectural Committee breached any duty to other Owners in issuing approval of such Owner's improvements or alterations.

Section 5.21. Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible from Neighboring Property.

Section 5.22. Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Architectural Committee.

Section 5.23. Drainage. No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the approved drainage plans on file with the municipality or other governing body in which the Project is located. In addition, no Owner or other Person shall change the grade or elevation of a Lot in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the approved drainage plans.

Section 5.24. Basketball Goals and Backboards. No basketball backboard, hoop or similar structure or device shall be permitted except in accordance with the Architectural Committee Rules.

Section 5.25. Playground Equipment. No jungle gyms, swing sets or similar playground equipment which would be Visible from Neighboring Property shall be erected or installed on any Lot without the prior written approval of the Architectural Committee.

Section 5.26. Lights. Except as initially installed by the Declarant, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other property except as approved by the Architectural Committee.

Section 5.27. Flags. The official flag of the United States and/or the State of Georgia may be displayed on any Lot provided (i) such flag is displayed in the manner required under the federal flag code from a pole attached to a Residential Unit on the Lot, (ii) the pole is no higher than the top of the Residential Unit, (iii) the pole is no longer than ten feet in length and does not extend more than ten feet from the edge of the Residential Unit, (iv) the flag is no more than twenty four square feet in size, (v) any flag lighting does not violate Section 5.26 of this Declaration, and (vi) the flag is maintained in good condition. The flag of another nation may be displayed in lieu of the United States Flag on national holidays of such nation provided such display complies with the requirements for displaying the United States Flag.

Section 5.28. Yard Sales. Owners may hold "yard sales" to sell personal property of such Owners only in compliance with the following requirements: (i) yard sales shall be limited to two days per year on any Lot, (ii) no yard sale shall

commence prior to 6 AM Eastern Time, or continue after 5 PM Eastern Time, (iii) no Owner shall post any signs advertising any yard sale anywhere on the Property except that a temporary sign may be posted on such Owner's Lot on the day that a yard sale is being held, and (iv) if the Association ever adopts standard yard sale dates for the Property, yard sales shall be held only on such dates. The Association shall give reasonable notice to all Owners if it adopts standard yard sale dates for yard sales on the Property.

Section 5.29. Holiday Displays. Owners may display holiday decorations which are Visible from Neighboring Property only if the decorations are of the kinds normally displayed in single family residential neighborhoods, are of reasonable size and scope, and do not disturb other Owners and residents by excessive light or sound emission or by causing an unreasonable amount of spectator traffic. Holiday decorations may be displayed between October 1 and January 31 of each year and, during other times of year, from one week before to one week after any nationally recognized holiday.

Section 5.30. Firearms. The discharge of firearms within the Property is prohibited except as permitted by law for self-defense. The term "firearms" includes, but is not limited to, pistols, rifles, "B-B" guns, pellet guns, cross-bows and other firearms of all types, regardless of size. The Board may impose fines and exercise other enforcement remedies as set forth in this Declaration, but shall have no obligation to exercise self-help to prevent or stop any such discharge.

Section 5.31. Storm Water Detention/Retention Ponds, Creeks and Streams. Except as herein provided, all storm water retention/detention ponds, creeks and streams within the Project shall be used for aesthetic amenities and storm water drainage only; no other use thereof, including, without limitation, swimming, ice skating, playing, or use of personal flotation devices, and other recreation, shall be permitted, without the written consent of the Board of Directors. The Association and/or the Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the any storm water detention/retention pond, creek or stream within the Project. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any body of water located within the Project. Applicable governmental agencies, the Declarant and the Association, shall have the sole right to control the water level of all bodies of water located within the Project and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any storm water detention/retention pond, creek and stream within the Project. Owners shall have no riparian or littoral rights with respect to the waters in any creek or stream within the Project and shall not be permitted to withdraw water from any creek or stream as may exist in the Project without the prior written consent of the Board of Directors.

Section 5.32. Undisturbed Buffer Areas. The Project may contain, state waters, wetlands and undisturbed buffer areas, as more particularly shown on the recorded subdivision plat(s) for the Project. Land disturbing activities shall not be conducted within any state waters, wetlands or undisturbed buffer areas, as shown on the

recorded subdivision plats for the Project, except with prior written approval under Section 5.20 and in compliance with Georgia law, including, without limitation, the Control of Erosion and Sedimentation Act, O.C.G.A. Section 12-7-1, *et seq.*, as amended from time to time and applicable Cherokee County, Georgia rules, regulations and zoning conditions.

#### Section 5.33. Solar Collectors.

(A) This section applies to solar collectors ("Solar Collectors") that gather solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for the residential Unit that it serves.

(B) "Regulated Solar Collectors" means Solar Collectors subject to state or local laws as such regulations may be amended or modified in the future or subject to any other applicable federal, state or local law, ordinance or regulation ("Solar Laws") that would render the restrictions in this section on Unregulated Solar Collectors (hereinafter defined) invalid or unenforceable as to a particular Solar Collector. "Unregulated Solar Collector" means all Solar Collectors that are not Regulated Solar Collectors.

(C) Unless installed by Declarant or a Designated Builder, or approved in writing by the Architectural Committee, no Unregulated Solar Collectors shall be permitted on any Lot, whether attached to a building or structure or on any Lot, unless approved in writing by the Architectural Committee, with such screening as such Committee may require. Unregulated Solar Collectors must be façade or roof mounted and not visible from areas open to common or public access.

(D) Regulated Solar Collectors that are not installed by Declarant or a Designated Builder shall be subject to the following requirements:

(i) If permitted by applicable Solar Laws, no Regulated Solar Collector shall be permitted on any Lot, whether attached to a building or structure or on any Lot, unless approved in writing by the Architectural Committee, in a location or with such screening as such Committee may require. If such restriction is not so permitted, the provisions of subsections (ii) and (iii) below shall apply.

(ii) A Regulated Solar Collector shall be placed so as not to be visible by a person on the ground (a) on the façade of a structure that faces areas open to common or public access, (b) on a roof surface that slopes downward towards the same areas open to common or public access that the façade faces, or (c) within an area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those area of common or public access faced by the structure.

(iii) A Regulated Solar Collector shall be placed and screened as directed by the Architectural Committee if such placement and screening will not have the effect of preventing the reasonable use of a Solar Collector.

(iv) Owners shall install and maintain screening improvements ("Screening") around Solar Collectors to screen items that would otherwise be Visible from Neighboring Property unless such requirement would violate the requirements of subsection (iii) above, if an Owner is not required to install and maintain Screening due to an unreasonable delay in installation of the Solar Collector that such Screening would cause, the Owner shall install such screening within thirty (30) days following installation of the Solar Collector and shall thereafter maintain such Screening, unless such Screening installation or maintenance will violate the provisions of subsection (iii) above. If an Owner is not required to install Screening due to an unreasonable increase in the cost of installing the Solar Collector caused by the cost of such Screening, the Association shall have the right, at the option of the Association, to enter onto the Lot and install such Screening and, in such event, the Owner shall maintain the Screening following installation, unless such Screening installation or maintenance will violate the provisions of subsection (iii) above.

The provisions of this section are severable from each other; the invalidity or unenforceability of any provision or portion of this section shall not invalidate or render unenforceable any other provisions or portions of this section, and all such other provisions or portions shall remain valid and enforceable. The invalidity or unenforceability of any provisions or portions of this section to a particular type of Solar Collector or to a particular Solar Collector on a particular Lot shall not invalidate or render unenforceable such provisions or portions regarding other Solar Collectors on other Lots.

#### ARTICLE VI RESERVATION OF RIGHT TO RESUBDIVIDE AND REPLAT

Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time, without the consent of other Owners, to resubdivide and replat any lot or lots which the Declarant then owns and has not sold, which right shall include, without limitation, the right to create and/or more specifically describe any Lot, change any Lot or portion of a Lot to Common Area and create a public or private street over all or any portion of a Lot or other property within the Project. The boundary lines of any Lot not owned by Declarant shall not be changed without the consent of the Owner(s) and Mortgagee(s) of such Lot.

#### ARTICLE VII PARTY WALLS

Section 7.1. General Rules of Law to Apply. Each wall or fence, any part of which is placed on a dividing line between separate lots shall constitute a "Party Wall". Each adjoining Owner's obligation with respect to party walls shall be determined by these Covenants and Restrictions and, if not inconsistent, by Georgia law.

Section 7.2. Sharing Repair and Maintenance. Each Owner shall maintain the exterior surface of a party wall facing his lot. Except as provided in this Article, the cost of reasonable repair shall be shared equally by adjoining lot Owners.

Section 7.3. Damage by One Owner. If a party wall is damaged or destroyed by the act of one adjoining Owner, or his guests, tenants, licensees, agents or family members (whether or not such act is negligent or otherwise culpable), then that Owner shall immediately rebuild or repair the party wall to its prior condition without cost to the adjoining Owner and shall indemnify the adjoining Owner from any consequential damages, loss or liabilities. No Owner shall violate any of the following restrictions and any damage (whether cosmetic or structural) resulting from violation of any of the following restrictions shall be considered caused by the Owner causing such action or allowing such action to occur on such Owner's Lot:

(i) No Owner shall allow sprinklers to spray or other water sources to deliver water within five feet (5') of any wall, excluding rainfall that falls directly on such area (i.e. an Owner shall not collect rainfall from other portions of the Lot and deliver it within five feet (5') of any wall);

(ii) No Owner shall allow any plant to attach themselves to any wall (e.g. ivy);

(iii) No Owner shall allow any tree to grow within six feet (6') of any wall (with such distance measured from the above-ground part of the tree that is nearest to the wall within five feet (5') of the ground level of the tree, including any portion of the root system that is not completely covered by dirt);

(iv) No Owner shall allow attachment of anything to any wall;  
and

(v) No Owner shall allow water to be provided (by sprinkler, drip line, hose, hand delivery or otherwise) to any plant located within five feet (5') of any wall, excluding rainfall that falls directly on such plant (i.e. an Owner shall not collect rainfall from other portions of the Lot and deliver it to any plant within five feet (5') of any wall).

Section 7.4. Other Damage. If a party wall is damaged or destroyed by any cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family members (including ordinary wear and tear and deterioration from lapse of time), then the adjoining owners shall rebuild or repair the party wall to its prior condition, equally sharing the expense; provided, however, that if a party wall is damaged or destroyed as a result of an accident or circumstances that originate or occur on a particular lot, (whether or not such accident or circumstance is caused by the action or inaction of the Owner of that lot, or his agents, tenants, licensees, guests or family members) then in such event, the Owner of that particular lot shall be solely responsible for the cost of rebuilding or repairing the party wall and shall immediately repair the party wall to its prior condition.

Section 7.5. Right of Entry. Each Owner shall permit the Owners of adjoining lots, or their representatives, to enter his lot for the purpose of installations, alteration, or repairs to a party wall on the Property of such adjoining Owners, provided

that other than for emergencies, requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner of the adjoining lot. An adjoining Owner making entry pursuant to this section shall not be deemed guilty of trespassing by reason of such entry. Such entering Owner shall indemnify the adjoining Owner from any consequential damages sustained by reason of such entry.

Section 7.6. Right of Contribution. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7.7. Consent of Adjoining Owner. In addition to meeting the requirements of this Declaration and of any applicable building code and similar regulations or ordinances, any Owner proposing to modify, alter, make additions to or rebuild (other than rebuilding in a manner materially consistent with the previously existing wall) the party wall, shall first obtain the written consent of the adjoining Owner, which shall not be unreasonably withheld or conditioned.

Section 7.8. Walls Adjacent to Streets or Common Area. A wall that is adjacent to streets or Common Area shall be treated as though the wall is a party wall with the street or common area constituting a Lot owned by the Association, except that any portion of such wall consisting of decorative metal-work that was originally on such wall (or any replacement thereof) shall be the sole responsibility of the Association (subject to an Owner's liability for repairs that would be such Owner's sole responsibility under Section 7.3 or Section 7.4). Notwithstanding the foregoing, (a) the provisions in Section 7.3 and Section 7.4 regarding an Owner's sole liability for repair of damage caused by such Owner's guests or licensees shall not apply to damage resulting from guests or licensees of the Association and such damage shall be considered caused by unrelated third parties and (b) the rule in Section 7.4 regarding damage arising from events occurring on a particular Owner's Lot shall not apply to damage arising from events occurring on streets or Common Areas. Notwithstanding the foregoing, any damage to a wall that is covered by the Association's casualty insurance shall, to the extent of proceeds actually received from such insurance, be paid for by the Association.

Section 7.9. Walls Forming Part of Residence. If a Lot contains a wall that is (i) an exterior wall of a Residence (including any garage associated with a Residence) and (ii) located on or immediately adjacent to the Lot boundary line, the provisions of this Article shall apply subject to the following:

(A) The wall shall have a perpetual easement for encroachments onto any adjoining Lot or Common Area of up to one foot, provided, however, that such easement shall only apply to initial construction of the wall and any replacements of the wall that do not encroach further than the original wall.

(B) Any roof improvements (including gutters and similar related improvements) above such wall shall have a perpetual easement for encroachments onto any adjoining Lot or Common Area of up to four feet, provided, however, that such easement shall only apply to initial construction of the roof improvements and any

replacements of the roof improvements that do not encroach further than the original roof improvements.

(C) The Owner of the Lot adjacent to such wall shall not, without the written approval of the Owner of the Lot on which the Residence is located, do any of the following:

- (i) use the wall for recreational purposes (e.g. bouncing balls);
- (ii) use the wall as part of an enclosure for pets; or

(iii) otherwise take any action regarding the wall that a reasonable person would conclude has a substantial likelihood of disturbing the peaceful and undisturbed use of the interior of the Residence of which the wall forms a part.

(D) Notwithstanding Section 7.7, the Owner of the Residence shall not be required to obtain permission from the adjoining Lot Owner to rebuild the wall in the same manner as originally constructed.

#### ARTICLE VIII MAINTENANCE BY OWNER

Each Owner shall maintain such Owner's Residence and Lot in good repair. Such maintenance shall include, without limitation, the following: (i) prompt removal of all litter, trash, refuse, and waste; (ii) lawn mowing on a regular basis; (iii) tree and shrub pruning; (iv) watering landscaped areas; (v) keeping improvements and exterior lighting in good repair and working order; (vi) keeping lawn and garden areas alive, free of weeds, and attractive; (vii) keeping driveways and walkways in good repair; (viii) complying with all governmental health and police requirements; (ix) maintaining grading and storm water drainage as originally established on the Lot; (x) repairing exterior damage to improvements; (xi) all maintenance, repair and replacement to the residential dwelling located on the Lot, including, without limitation, periodic painting and pressure washing as needed; (xii) maintaining, repairing and replacing all storm water drainage facilities, including, all pipes, wires and conduits related thereto, located on and exclusively serving the Lot; and (xiii) maintaining, repairing and replacing all pipes, wires and conduits, including, without limitation, plumbing, electric and sanitary sewer systems, which exclusively serve the Lot.

The yards and landscaping on all improved Lots shall be neatly and attractively maintained, and shall be cultivated and planted to the extent required to maintain an appearance in harmony with other improved lots in the Project. If any sidewalk is partially or completely located on an Owner's Lot and third parties have an easement to use such sidewalk, then the Association or governmental entity (and not the Owner) shall be responsible for the maintenance and repair of such sidewalk. During prolonged absence, an Owner shall arrange for the continued care and upkeep of his Lot. Except for areas owned by the Association or that the Association has elected in writing to maintain, which election may be terminated by the Association at any time, each Owner shall also maintain in good condition and repair any landscaping and sidewalk improvements that

are within the portion of any adjacent right of way that is located between such Owner's lot and the curb of the adjacent street. Any repainting or redecorating of the exterior surfaces of a Residence which alters the original appearance of the Residence will require the prior approval of the Architectural Committee.

In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement to be performed. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable period of time. If an Owner does not comply with the provisions hereof, the Association may provide such maintenance, repair or replacement to the Lot and all costs associated therewith shall be assessed against the Owner and the Lot as a specific assessment. This provision shall not apply to any Lot(s) owned by the Declarant, unless improved with a dwelling and occupied as a residence.

## ARTICLE IX EASEMENTS

Section 9.1. General. Each Lot shall be subject to those easements, if any, shown or set forth on a Plat for the Project, as amended from time to time, as well as the easements now or hereafter established by the Declarant in this Declaration or by any other document recorded in the Office of the Clerk of Superior Court of Cherokee County, Georgia.

### Section 9.2. Owner's Easements of Enjoyment.

(A) Every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Common Area.

(ii) The right of the Association after Notice and Opportunity for Hearing to suspend the right of a Member to use the Common Area, including, without limitation, any recreational facilities, for any period during which any Assessment against his Lot remains delinquent; and for a reasonable period of time for an infraction of the Declaration, Bylaws, rules and regulations or Architectural Committee Rules.

(iii) The right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Area, provided, however, that any such action taken at any time that Declarant owns any Lot shall be subject to the approval of Declarant. If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of the Common Area shall be subject to the Lot Owner's easement of ingress and egress.

(iv) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit or limit access to such portions of the Common Area, such as landscaped right-of-ways, not intended for use by the Owners or other lawful occupants of a Residential Unit.

(v) All encumbrances or other matters shown by the public records affecting title to the Common Area.

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

(B) If a Lot is leased or rented by the Owner thereof, the tenant and the members of his family residing with such tenant pursuant to the lease shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

(C) The guest and invitees of any Member or other person entitled to use the Common Area pursuant to this Declaration may use any recreational facility located on the Common Area provided they are accompanied by a Member or other person entitled to use the recreational facilities pursuant to this Declaration. The Board shall have the right to limit the number of guests and invitees who may use the Common Area at any one time and may restrict the use of the Common Area by guests and invitees to certain specified times.

Section 9.3. Drainage Easements. There is hereby created a blanket stormwater management easement for drainage of ground water on, over and across each

Lot in such locations as Stormwater Control Facilities are located. An Owner shall not at any time hereafter fill, block or obstruct any Stormwater Control Facilities on his lot and each Owner shall repair and maintain all Stormwater Control Facilities located on his lot. No structure of any kind shall be constructed and no vegetation shall be planted or allowed to grow within the drainage easements which may impede the flow of water under, over or through the easements or which may materially increase the flow of water onto another lot. All drainage areas shall be maintained by the Owner of the lots on which the easement area is located. It is anticipated that increased storm water run-off across downstream Lots will result from the construction of impervious surface within or adjacent to the Project. Neither the Declarant, Designated Builder, the Association nor any builder or Owner constructing according to plans and specifications approved under Section 5.20 hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction within the Project.

Section 9.4. Utility Easements. Except as installed by the Declarant, a Designated Builder with the consent of Declarant, or approved by the Architectural Committee, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, cable and radio signals, shall be erected, placed or maintained anywhere in or upon any lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures. No structure, landscaping or other improvements shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement which may damage or interfere with the installation and maintenance of utilities. Such public utility easement areas, and all improvements thereon, shall be maintained by the Owner of the lot on which the easement area is located unless the utility company or a county, municipality or other public authority maintains said easement area. There is hereby created a blanket easement upon, across, over and under the Property for ingress to, egress from and the installation, replacing, repairing and maintaining of all utility and service lines and systems including, but not limited to, water, sewer, gas, telephone, electricity, cable or communication lines and systems, such as utilities are installed in connection with the initial development of each Lot. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the Lots and Common Areas and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings thereon. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utility or sewer lines may be installed or relocated within the Property except as initially created or approved by Declarant without the prior written approval of, in the case of a Common Area, the Association and the Architectural Committee or, in the case of a Lot, the Owner of such Lot and the Architectural Committee. Nothing contained herein shall entitle Declarant, a Designated Builder, or any utility in exercising the rights granted herein to disturb any Residential Unit constructed in accordance with the requirements hereof. Declarant further reserves and grants to Designated Builder temporary construction easements for utility lines, maintenance of storage tanks and facilities and access to and from such facilities.

Section 9.5. Encroachments. The lots shall be subject to an easement for overhangs and encroachments by walls, fences or other structures upon adjacent lots as constructed by the original builder or as reconstructed or repaired in accordance with the original plans and specifications or as a result of the reasonable repair, shifting, settlement or movement of any such structure.

Section 9.6. Declarant's Easement. Easements over the lots for (a) the installation and maintenance of electric, telephone cable, communications, water, gas, drainage and sanitary sewer or similar or other lines, pipes or facilities: (i) as shown on the recorded Plat or (ii) as may be hereafter required or needed to service any lot (provided, however, no utility other than a connection line to a Residential Unit served by the utility shall be installed in any area upon which a Residential Unit has been or may legally be constructed on the lot); and (b) the installation, alteration, maintenance, repair and replacement of the Stormwater Control Facilities are hereby reserved by the Declarant, together with the right to grant and transfer the same.

Section 9.7. Easements to Facilitate Development. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, Architectural Committee Rules, and amendments or revisions thereto, Declarant reserves and grants to any Designated Builder an easement across the Project to maintain and carry on, upon such portion of the Project as Declarant or Designated Builder, with the consent of Declarant, may reasonably deem necessary, such facilities and activities as in its sole opinion may be required or convenient for Declarant's or Designated Builder's, as the case may be, development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or for the development, construction or benefit of any neighboring property, including, but not limited to: (a) the right to place or authorize the placement of marketing and directional signs on Lots or right-of-way(s) at street intersections within the Project; (b) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Project, including, without limitation, any Lot; (c) the right to tie into any portion of the Project with streets, driveways, paths, parking areas and walkways; (d) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Project; (e) the right to grant easements over, under, in or on the Project, 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 Project; (f) the right to convert Lots (with the consent of the Owner thereof) to Common Area and/or streets; (g) the right to construct utilities, recreational facilities and other improvements on Common Area; (h) the right to carry on sales and promotional activities in the Project; and (i) the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant may use residences, offices or other buildings owned or leased by Declarant or Designated Builder, respectively, as model residences and sales offices.

This Section shall not be amended without the written consent of Declarant until the rights of Declarant have terminated as provided herein.

Section 9.8. Dedications and Easements Required by Governmental Authority. Declarant hereby reserves to itself and its successors and assigns, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

Section 9.9. Assignment. Declarant may make limited temporary assignments of its easement rights under this Declaration to any person or entity performing construction, installation or maintenance on any portion of the Property.

Section 9.10. Easement for Maintenance and Enforcement. The Association and its directors, officers, agents, contractors and employees, the Architectural Review Committee and any other persons and entities authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any Residential Unit), for (i) the exercise and discharge of their respective powers and responsibilities under the Project Documents; (ii) making inspections in order to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvements approved by the Architectural Committee and that all Improvements are being properly maintained as required by the Project Documents; (iii) correcting any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area; (iv) performing installations or maintenance of utilities, landscaping or other improvements located on the Lots for which the Association is responsible for maintenance; or (v) correcting any condition which violates the Project Documents.

Section 9.11. Easement for Emergency Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, Bylaws, rules and regulations of the Association and Architectural Committee Rules, which right may be exercised by any member of the Board, the officers, agents, employees, and managers of the Association and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a reasonable period of time after requested by the Association, but shall not authorize entry into any Residential Unit located on a Lot without the permission of the Owner.

Section 9.12. Easement for Entry Features and Streetscapes. There is hereby reserved to the Declarant and granted to the Association and any Designated Builder an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features and similar streetscapes for the Project, over and upon any

portion of a Lot containing such entry features or streetscapes as may be more fully described on the recorded subdivision plat(s) for the Project. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around entry features and streetscapes and the right to grade the land under and around the same.

Section 9.13. Rights of Declarant and Designated Builders. Notwithstanding any other provision of this Declaration to the contrary, the Declarant and each Designated Builder has the right to maintain construction trailers, model homes and sales offices on Lots owned or leased by such party and to construct and maintain parking areas for the purpose of accommodating persons visiting such construction trailers, model homes and sales offices and employees and contractors of such party.

## ARTICLE X MAINTENANCE

Section 10.1. Maintenance by the Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and may, without any approval of the Owners being required, do any of the following:

(A) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area);

(B) Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a road, street, walk, driveway and parking area;

(C) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(D) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(E) Construct, maintain, repair and replace landscaped areas on any portion of the Common Area;

(F) Maintain any portion of the Common Area on which Stormwater Control Facilities are located;

(G) Maintain any multiple-residence mailboxes used for delivery of personal mail within the Property; provided, however, that each Owner shall be responsible for repair or replacement of locks and/or keys for each Owner's mailbox; and

(H) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the appearance thereof, in accordance with the general purposes specified in this Declaration.

Neither Declarant nor any Builder within the Project shall be responsible for maintenance, repair or replacement of Common Areas or improvements thereon previously transferred to the Association, except that (i) the installer of any landscaping on the Common Areas shall provide a 90 day warranty period for such landscaping and (ii) any express or implied warranties provided by any provider of labor or materials in connection with improvements shall be deemed assigned to the Association concurrently with such transfer. This paragraph shall not be subject to amendment without the written approval of the Declarant.

Section 10.2. Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association in connection therewith. In the event that the Association determines that the need for maintenance, repair, or replacement of the Common Area is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, shall be assessed against the Lot of such Owner as a specific assessment.

Section 10.3. Payment of Utility Charges. Each Lot shall be separately metered for water, sewer and electrical service and all charges for such services shall be the sole obligation and responsibility of the Owner of each Lot. The cost of water, sewer and electrical service to the Common Area shall be a Common Expense of the Association and shall be included in the budget of the Association.

Section 10.4. Maintenance by Governmental Entities. No municipality or other governmental entity is responsible for or will accept maintenance for any private facilities, landscaped areas, or Common Areas within the Project.

Section 10.5. Landscaping Replacement. Landscaping originally planted on the Common Areas may exceed the landscaping that is ultimately planned for Common Areas due to over-planting in anticipation of normal plant losses. The Board is hereby granted the authority to remove and not replace dead or damaged landscaping if, in the reasonable discretion of the Board, (a) the remaining landscaping is acceptable to the Board and (b) the remaining landscaping is generally consistent in quality and quantity with the landscaping shown on approved landscaping plans filed with governmental entities in connection with Property, even if the location of specific plants is different than the locations shown on such approved landscaping plans. Declarant reserves the right to substitute plants and trees planted on the Property or shown on approved landscaping plans with equivalent or better landscaping materials. Neither Declarant nor any other installer of landscaping in Common Areas shall be responsible for replacement of landscaping that dies more than ninety days following installation or that requires replacement due to vandalism, lack of proper watering or maintenance by Association, or damage due to negligence; the Association shall be solely responsible for such replacement (subject to potential recovery by the Association from any vandal or negligent person).

Section 10.6. Alteration of Maintenance Procedures. Following the termination of the Class B membership and so long as Declarant owns any lot, the Association shall not, without the written approval of Declarant, alter or fail to follow the maintenance and repair procedures recommended by the Association's management company as of the termination of the Class B membership unless such alteration will provide for a higher level of maintenance and repair. Declarant shall have the right, but not the obligation, to perform any required maintenance or repair not performed by the Association within ten business days following notice from Declarant that such maintenance or repair is required under this section; if Declarant performs such maintenance or repair, the costs incurred by Declarant shall be reimbursed by the Association within thirty days following written demand for reimbursement accompanied by copies of invoices for such costs. This section shall not be subject to amendment without the written approval of the Declarant.

Section 10.7. Conveyance of Common Area by Declarant to Association; No Implied Rights. Declarant or the owner of the property with the consent of Declarant, may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Area to be used and, if and as provided in Section 10.1 hereof, maintained by the Association for the benefit of its members. So long as Declarant owns any property primarily for development and/or sale in the Project or has the right unilaterally to annex additional property to the Declaration, Declarant may, upon written notice to the Association, require the Association to reconvey to Declarant all or any portion of the Common Area, improved or unimproved, at no charge to Declarant, without a vote of the members of the Association, if all or any portion of the Common Area is: (a) found by Declarant to have been conveyed in error; (b) needed by Declarant to make adjustments in property boundary lines; or (c) reasonably determined by Declarant to be needed by Declarant due to changes in the overall scheme of development for the Project.

The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept on behalf of the Association any such conveyance to the Association, to reconvey any such property on behalf of the Association and to execute on behalf of the Association any and all documents, including, without limitation, deeds, necessary or convenient to effectuate and document any such conveyance to or reconveyance from the Association. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise. Declarant, or such owner of the property with the approval of Declarant, shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether such property has been made available for the use of Owners. Declarant, or the owner of the property with the approval of Declarant, may reserve, by lease, license, easement or otherwise, such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of

development for the Project. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the real estate records of Cherokee County, Georgia.

Section 10.8. Partition. The Common Area shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of: (a) all Owners of all portions of the property located within the Project; and (b) all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Lots located within the Project.

Section 10.9. Condemnation. In the event of a taking by eminent domain of all or any portion of the Common Area on which improvements have been constructed, the Association shall, if reasonably possible, restore or replace such improvements on the remaining Common Area, unless within sixty (60) days after such taking, an alternative plan is approved by at least seventy-five percent (75%) of the Total Association Vote and the Declarant. The provisions of this Declaration applicable to the replacement or restoration of damaged improvements on the Common Area shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

Section 10.10. Liability. Owners, Occupants and their guests shall use the common areas maintained by the Association and all other Common Area and all portions of the Project not contained within a Lot at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. All Owners and Occupants shall have an affirmative duty and responsibility to inspect the Common Area and all portions of the Project not contained within a Lot for any defects, perils or other unsafe conditions relating to the use and enjoyment thereof. The Association, Designated Builder, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for: (a) personal injury to any person occurring on the Common Area; (b) loss or damage to personal belongings used or stored on the Common Area or on any other portion of the Project; or (c) loss or damage, by theft or otherwise, of any other property of such Owner or Occupant.

In addition to the foregoing, the Association, Designated Builder, the Declarant and their respective officers, directors, employees, representatives and agents shall not be liable for injury or damage to any Person or property: (a) caused by the elements or by an Owner or any other Person; (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association or from any portion of the Common Area; or (c) caused by any street, pipe, plumbing, drain, pond, lake, dam, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair.

## ARTICLE XI INSURANCE

Section 11.1. Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(A) Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured Property, exclusive of land, excavations, foundations and other items normally excluded from a property policy,

(B) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000.00. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and Property damage arising out of or in connection with the use, ownership or maintenance of the Common Area, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party;

(C) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Georgia;

(D) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

(E) The insurance policies purchased by the Association shall, to the extent reasonably available) contain the following provisions:

(i) Each Owner is an insured owner under the policy to the extent of the Owner's insurable interest.

(ii) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;

(iii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(iv) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

(v) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(vi) The Association shall be named as the Insured;

(vii) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

(F) If the Property is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a policy of flood insurance on the Common Area must be maintained in the lesser of one hundred percent (100%) of the current replacement cost of the buildings and any other Property covered by the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended;

(G) "Agreed Amount" and "Inflation Guard" endorsements.

Section 11.2. Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

### Section 11.3. Fidelity Bonds.

(A) The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including, but without limitation, officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of fidelity bond maintained by the Association shall be based upon the best business judgment of the Board, and shall not be less than the greater of (i) the amount equal to one hundred percent (100%) of the estimated annual operating expenses of the Association, (ii) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, (iii) the sum equal to three (3) months assessments on all Lots plus adequate reserve funds. Fidelity bonds obtained by the Association must also meet the following requirements:

(i) The fidelity bonds shall name the Association as an obligee;

(ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions;

(iii) The bonds shall provide that they may not be canceled or substantially modified (including cancellation from non-payment of premium) without at least ten (10) days prior written notice to the Association.

(B) The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity bond to be maintained by the Association pursuant to subsection (A) of this section. The fidelity bond maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee.

Section 11.4. Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Article shall be a Common Expense and included in the budget of the Association and shall be paid by the Association.

Section 11.5. Insurance Obtained by Owners. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of a Lot. Each Owner shall be responsible for obtaining Property insurance for his own benefit and at his own expense covering his Lot, and all Improvements and personal property located thereon. Each Owner shall also be responsible for obtaining at his expense personal liability coverage for death, bodily injury or Property damage arising out of the use, ownership or maintenance of his Lot.

Section 11.6. Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by Property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 11.7 of this Article, the proceeds shall be disbursed for the repair or restoration of the damage to Common Area.

Section 11.7. Repair and Replacement of Damaged or Destroyed Property - Insured by Association. Immediately after damage or destruction by fire or other casualty to any portion of any structure or improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or

reconstructed unless, within sixty (60) days after the casualty, a proposal not to repair or reconstruct such property is approved by at least eighty percent (80%) of the Total Association Vote and the Declarant. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members of the Association, levy a special assessment against the Owner of each Lot. Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess funds shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition consistent with this Declaration.

Section 11.8. Damage and Destruction -- Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any structure or improvement located on a Lot shall be repaired or reconstructed by the Owner thereof in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Section 5.20 of this Declaration. Said repair or reconstruction shall be completed within seventy-five (75) days after such damage or destruction occurred or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable period of time thereafter. Alternatively, the Owner of the Lot may elect to demolish all improvements on the Lot and remove all debris and ruins therefrom within seventy-five (75) days after such damage or destruction occurred and thereafter maintain the Lot in a neat and attractive, landscaped condition consistent with this Declaration. The Owner shall pay all costs which are not covered by insurance proceeds.

## ARTICLE XII TERM AND ENFORCEMENT

Section 12.1. Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, the rules and regulations, use restrictions and Architectural Committee Rules, as amended or modified from time to time, and with the Covenants and Restrictions set forth in this Declaration, the recorded subdivision plat(s) for the Project and in the deed to such Owner's Lot, if any. Declarant or the Association, acting through the Board of Directors, may impose fines or other sanctions for violations of the foregoing in accordance with this Declaration and the Bylaws, which fines shall be collected as provided herein for the collection of assessments; provided, however, only one fine may be imposed for a single violation such that an Owner or Occupant may not be fined by Declarant and the Association for the same violation; and provided, further,

Declarant or the Association, as the case may be, may count each day a violation continues after notice thereof as a separate violation. In the event fines or other sanctions are imposed by Declarant, Declarant shall have any and all rights to collect such fines or sanctions (which fines shall be payable to the Association) and any related charges, including, without limitation, attorneys' fees actually incurred and costs of collection, in the same manner as provided herein for the collection of assessments by the Association acting through the Board.

The failure to comply with this Declaration, the Bylaws, use restrictions, the rules and regulations and the Architectural Committee Rules shall be grounds for an action to recover sums due for damages, injunctive relief or both, and shall include, without limitation, reasonable attorneys' fees actually incurred, maintainable by the Association, Declarant or an aggrieved Owner. The failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. Declarant or the Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or Architectural Committee Rules and to assess the cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

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

Section 12.2. Term. The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association, Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, if and to the extent that Georgia law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision(s) shall be: (a) automatically extended for successive periods of twenty (20) years (or the maximum period allowed by applicable law, if less), unless a written instrument signed by the then Owners of at least two-thirds (2/3) of the Lots has been recorded within the year immediately preceding the beginning of a twenty (20) year renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated to the extent specified therein; or (b) extended, renewed, modified or terminated as otherwise provided herein or by applicable law.

### Section 12.3. Amendment.

Section 12.3.1. By the Declarant. This Declaration may be amended unilaterally at any time and from time to time by Declarant if such amendment is: (i) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial determination which shall be in conflict therewith; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (iv) necessary to enable any governmental agency or private insurance company, including without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, such amendment shall not materially adversely affect the substantive rights of any Owner to use his or her Lot without the consent of the affected Owner.

Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, such amendment shall not materially adversely affect the substantive rights of any Owner to use his or her Lot without the consent of the affected Owner.

Section 12.3.2. By the Board. The Board of Directors, with the written consent of the Declarant, and without a vote of the members may amend this Declaration: (i) to elect to be governed by and thereafter comply with the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220 *et seq.*; (ii) to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (iii) to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iv) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (v) to enable any governmental agency or private insurance company, including without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, such amendment shall not materially adversely affect the substantive rights of any Owner to use his or her Lot without the consent of the affected Owner.

Section 12.3.3. By the Association. In addition to the above, this Declaration may be amended upon the affirmative vote or written consent or any combination thereof of Owners holding at least two-thirds (2/3) of the Total Association Vote and the consent of Declarant. No provision of this Declaration which reserves or grants special rights to a Designated Builder shall be amended without the

prior written consent of the Designated Builder. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein.

The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given. The amendments authorized by this Section may be of uniform or non-uniform application and Owners shall be deemed to have agreed that the Declaration may be amended as provided herein and that any rule of law requiring unanimous approval of amendments having a non-uniform application shall not apply.

Any action to challenge the validity of an amendment adopted under this Section 12.3 must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

Section 12.4. Approval of Litigation. Except for any legal proceedings initiated by the Association to (i) enforce the use restrictions contained in this Declaration; (ii) enforce the Association Rules; (iii) enforce the Architectural Committee Rules; (iv) collect any unpaid Assessments levied pursuant to this Declaration, (v) challenge *ad valorem* taxation; (vi) bring counterclaims in proceedings instituted against the Association; or (v) enforce a contract entered into by the Association with vendors providing services to the Association, the Association shall not incur litigation expenses, including without limitation, attorneys' fees and costs, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, without the prior approval of a majority of the Members of the Association entitled to cast a vote who are voting in person or by proxy at a meeting duly called for such purpose, excluding the vote of any Owner who would be a defendant in such proceedings. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be financed by the Association only with monies that are collected for that purpose by special assessment and the Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations. Each Owner shall notify prospective Purchasers of such legal proceedings initiated by the Board and not included in the above exceptions. Nothing in this section shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to (i) enforce the Project Documents; (ii) comply with the statutes or regulations related to the operation of the Association; (iii) amend the Project Documents as provided in this Declaration; (iv) grant easements or convey Common Area as provided in this Declaration or (v) perform the obligations of the Association as provided in this Declaration. Subject to the exceptions in the first sentence of this section, with respect to matters involving property or improvements to property, the Association (or Board of Directors) additionally shall not initiate legal proceedings or join as a plaintiff in legal proceedings unless (1) such property or improvement is owned either by the Association

or jointly by all Members of the Association, (2) the Association has the maintenance responsibility for such property or improvements pursuant to this Declaration, or (3) the Owner who owns such property or improvements consents in writing to the Association initiating or joining such legal proceeding.

Section 12.5. Annexation of Additional Property. Until the later of (a) fifteen years following recordation of this Declaration or (b) termination of the Class B Membership, Declarant shall have the right to annex any real property that is adjacent to any real property that is then subject to this Declaration; property shall be deemed adjacent if contiguous at any point or if separated only by a street, alley, right-of-way or easement. Annexation shall be effective upon recordation of a Supplemental Declaration executed by Declarant with the Superior Court of Cherokee County, Georgia describing the adjacent real property being annexed to this Declaration. No consent or approval of such annexation by the Board of Directors or Members of the Association shall be necessary for such annexation by Declarant. Upon annexation, the annexed real property shall be deemed to be part of the "Property" and shall have the same rights, privileges and obligations as the Property originally subject to the terms of this Declaration, including membership in the Association, except that such rights, privileges and obligations shall not include matters arising or accruing prior to annexation; annual assessments shall be prorated for annexed property through the date of annexation.

Upon annexation, the Owners of lots within the annexed property shall have no obligation to pay Assessments until the first lot within the annexed property is conveyed to a Purchaser, or the first common area within the annexed property is transferred to and accepted for maintenance by the Association; further provided, that if the declaration of annexation divides such annexed property into phases, then the lots within each phase will be subject to assessment when the first lot in the phase is conveyed to a Purchaser or the first common area in the phase is transferred to and accepted for maintenance by the Association. Any area within the annexed property designated by a Plat as "common area" or similar designation shall be conveyed to the Association, and the Association shall accept such conveyance, upon the completion of the improvements to such common area in accordance with the approved plans. Such common area shall be conveyed to the Association, free of all monetary encumbrances (including mechanics' and materialmen's liens), except current real and personal property taxes and other easements, conditions, reservations and restrictions then of record, including without limitation, this Declaration.

Section 12.6. Annexation by the Association. Upon the written consent of: (a) the owner(s) thereof; (b) the Declarant; and (c) the Owners holding at least two-thirds (2/3) of the Total Association Vote, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Cherokee County, Georgia land records a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon the filing for record of such Supplemental Declaration in the Cherokee County, Georgia land records, unless a later effective date is provided therein.

Section 12.7. De-Annexation of Property. Declarant shall have the right from time to time, in its sole discretion and without the consent of any person (other than consent of the owner of the property being de-annexed), to remove any portion of the Property from the coverage of this Declaration and the jurisdiction of the Association, provided, however, that a portion of the Property may not be withdrawn from this Declaration unless at the time of such withdrawal no Residential Units or material Common Area improvements have been constructed thereon (unless the de-annexation is for the purpose of accomplishing minor adjustments to the boundaries of Lots or the Property). Withdrawal of Property may occur for any purpose as long as it is not unequivocally contrary to the overall, uniform scheme of development. No withdrawal of Property shall occur if such withdrawal would act to terminate access to any right-of-way or utility line unless reasonable alternative provisions are made for such access. No withdrawal of Property shall affect any lien for Assessments on the withdrawn Property for Assessments accruing prior to withdrawal. Any withdrawal shall be accomplished by the filing for record of an amendment to this Declaration which describes the property to be removed and is executed by the Declarant and the Owner(s) of the property being removed if not the Declarant. Any withdrawal shall be effective upon filing for record of such amendment in the Cherokee County, Georgia land records, unless a later effective date is provided therein. Such amendment shall be executed by the Declarant and the Owner(s) of the property being removed and shall not require the vote or consent of any other Person.

Section 12.8. Occupants Bound. All provisions of the Declaration, Bylaws, Association Rules, use restrictions and Architectural Committee Rules which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants and the guests and invitees of Owners and Occupants. The Owner shall be responsible for insuring that the Occupants, guests, invitees and licensees of the Owner and Occupant strictly comply with all provisions of the Declaration, Bylaws, Association Rules, use restrictions and Architectural Committee Rules. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.

### ARTICLE XIII

#### CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS

It is intended that the Common Area, each Lot, and all Improvements constructed on the Property by persons ("Developers") in the business of constructing improvements will be constructed in compliance with all applicable building codes and ordinances and that all Improvements will be of a quality that is consistent with the good construction and development practices in the area where the Project is located for production housing similar to that constructed within the Project. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the responsibility therefor. It is intended that all disputes and claims regarding alleged defects ("Alleged Defects") in any Improvements on any Lot or Common Area will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, all Developers (including Declarant), the Association, the Board, and all Owners shall be bound by the following claim resolution

procedures. In the event of a conflict between the terms and provisions of this Article XIII and any agreement entered into by and between a Developer and an Owner, the terms and provisions of such agreement shall prevail. For the avoidance of doubt, Developers shall have independent standing to enforce the provisions set forth in this Article XIII.

Section 13.1. Right to Cure Alleged Defect. If a person or entity ("Claimant") claims, contends, or alleges an Alleged Defect, each Developer shall have the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

Section 13.3.1. Notice of Alleged Defect. If a Claimant discovers an Alleged Defect, within fifteen (15) days after discovery thereof, Claimant shall give written notice of the Alleged Defect ("Notice of Alleged Defect") to the Developer constructing the Improvement with respect to which the Alleged Defect relates.

Section 13.3.2. Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by a Developer of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Developer, Developer shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into the Common Area, areas of Association responsibility, any Lot or Residential Unit, and/or any Improvements for the purposes of inspecting and/or conducting testing and, if deemed necessary by Developer at its sole discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Section 13.2. No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Article shall be construed to impose any obligation on a Developer to inspect, test, repair, or replace any item or Alleged Defect for which such Developer is not otherwise obligated under applicable law or any warranty provided by such Developer in connection with the sale of the Lots and Residential Units and/or the Improvements constructed thereon. The right reserved to Developer to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to a Developer except by a written document executed by such Developer and recorded in the records of Cherokee County, Georgia.

Section 13.3. Legal Actions. All legal actions initiated by a Claimant shall be brought in accordance with and subject to Section 13.4 and Section 12.4 of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation, or arbitration against a Developer alleging (1) damages for costs of repairing Alleged Defect ("Alleged Defect Costs"), (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds from a Developer (or any other person or entity) to repair an Alleged Defect, any excess

funds remaining after repair of such Alleged Defect shall be paid in to the Association's reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against a Developer(s) which notice shall include at a minimum (1) a description of the Alleged Defect; (2) a description of the attempts of the Developer(s) to correct such Alleged Defect and the opportunities provided to the Developer(s) to correct such Alleged Defect; (3) a certification from an architect or engineer licensed in the State of Georgia that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (4) the estimated Alleged Defect Costs; (5) the name and professional background of the attorney retained by the Association to pursue the claim against the Developer(s) and a description of the relationship between such attorney and member(s) of the Board or the Association's management company (if any); (6) a description of the fee arrangement between such attorney and the Association; (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Developer(s) and the source of the funds which will be used to pay such fees and expenses; (8) the estimated time necessary to conclude the action against the Developer(s); and (9) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

Section 13.4. Alternative Dispute Resolution. Any dispute or claim between or among (a) a Developer (or its brokers, agents, consultants, contractors, subcontractors, or employees) on the one hand, and any Owner(s) or the Association on the other hand; or (b) any Owner and another Owner; or (c) the Association and any Owner regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to (i) the rights or duties of the parties under this Declaration; (ii) the design or construction of any portion of the Project, (iii) or an Alleged Defect, but excluding disputes relating to the payment of any type of Assessment (collectively a "Dispute"), shall be subject first to negotiation, then mediation, and then arbitration as set forth in this Section 13.4 prior to any party to the Dispute instituting litigation with regard to the Dispute.

Section 13.3.1. Negotiation. Each party to a Dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving a Dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion the Board believes its efforts will be beneficial to the parties and to the welfare of the community. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such negotiation.

Section 13.3.2. Mediation. If the parties cannot resolve their Dispute pursuant to the procedures described in Section 13.3.1 above within such time period as may be agreed upon by such parties (the "Termination of Negotiations"), the party instituting the Dispute (the "Disputing Part") shall have thirty (30) days after the termination of negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any

successor thereto or to any other independent entity providing similar services upon which the parties to the Dispute may mutually agree. No person shall serve as a mediator in any Dispute in which such person has a financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Dispute to mediation within thirty days after Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to persons or entities not a party to the foregoing proceedings.

Section 13.4.2.1. Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute mutually agree to extend the mediation period. The mediation shall be held in the County where the property is located or such other place as is mutually acceptable by the parties to the Dispute.

Section 13.4.2.2. Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties to the Dispute agree to obtain and assume the expenses of obtaining such advice as provided in Section 13.4.2.5 below. The mediator does not have the authority to impose a settlement on any party to the Dispute.

Section 13.4.2.3. Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

Section 13.4.2.4. Parties Permitted at Sessions. Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute or by witnesses in the course of the mediation shall be kept confidential. There shall be no stenographic record of the mediation process.

Section 13.4.2.5. Expenses of Mediation. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other

expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof of expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless agreed to otherwise. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such mediation.

Section 13.3.3. Final and Binding Arbitration. If the parties cannot resolve their Dispute pursuant to the procedures described in Subsection 13.4.2 above, the Disputing Party shall have thirty (30) days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this Section 13.4. If the Disputing Party does not submit the Dispute to arbitration within thirty days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to a person or entity not a party to the foregoing proceedings.

The existing parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No Developer shall be required to participate in the arbitration proceeding if all parties against whom a Developer would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this Section 13.4, the arbitrator shall have the authority to try all issues, whether of fact or law.

Section 13.4.3.1. Place. The arbitration proceedings shall be heard in the County where the Property is located.

Section 13.4.3.2. Arbitration. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the American Arbitration Association with experience in relevant matters which are the subject of the Dispute. The arbitrator shall not have any relationship to the parties or interest in the Project. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the initial complaint on all defendants named therein.

Section 13.4.3.3. Commencement and Timing of Proceeding. The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

Section 13.4.3.4. Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

Section 13.4.3.5. Discovery. The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The Developer shall also be entitled to conduct further tests and inspections as provided in Section 13.1 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

Section 13.4.3.6. Limitation on Remedies/Prohibition on the Award of Punitive Damages. Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages. The arbitrator's award may be enforced as provided for in the Georgia Arbitration Code, O.C.G.A. § 9-9-1, *et seq.*, or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

Section 13.4.3.7. Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summary issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

Section 13.4.3.8. Expenses of Arbitration. Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by such party. Each party to the Dispute shall share equally all charges rendered by the arbitrator unless otherwise agreed to by the parties.

Section 13.5. Statute of Limitations. Nothing in this Article shall be considered to toll, stay, or extend any applicable statute of limitations.

Section 13.6. Enforcement of Resolution. If the parties to a Dispute resolve such Dispute through negotiation or mediation in accordance with Subsection 13.4.1 or Subsection 13.4.2 above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if an arbitration award is made in accordance with Subsection 13.4.3 and any party to the Dispute thereafter fails to comply with such resolution or award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or award without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the terms of the negotiation, mediation, or the award shall be entitled to recover from the non-complying party (or if more than one non-

complying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation, mediation or award including, without limitation, attorneys' fees and court costs.

#### ARTICLE XIV GENERAL PROVISIONS

Section 14.1. 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.

Section 14.2. Construction. The Article and section headings have been inserted for convenience only and shall not be considered in resolving questions of interpretation or construction. All terms and words used in this Declaration regardless of the number and gender in which they are used shall be deemed and construed to include any other number, and any other gender, as the context or sense requires. In the event of any conflict or inconsistency between this Declaration, Stormwater Covenant, the Articles, and/or the Bylaws, the provisions of Stormwater Covenant shall control over the provisions of this Declaration, the provisions of this Declaration shall control over the provision of the Articles and the Bylaws and the provisions of the Articles shall prevail over the provisions of the Bylaws.

Section 14.3. Notices. Except as otherwise specifically provided in such document(s), as the case may be, notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Lot and to the Declarant, any Designated Builder, and the Association at the address of their respective registered agent on file with the Secretary of State of the State of Georgia. Any notice addressed to the Architectural Committee shall be addressed to the Architectural Committee and sent the address of the Association's registered agent on file with the Secretary of State of the State of Georgia. Any Owner may designate a different address, including an electronic mail address, for notices to such Owner by giving written notice to the Association. Owners shall keep the Association advised of their current address and phone number(s) where they can be reached. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by Federal Express or other reputable commercial courier service, or issued electronically in accordance with Chapter 12 of Title 10 of the Official Code of Georgia Annotated, the "Uniform Electronic Transactions Act". The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent. Notwithstanding the foregoing, if application for approval, plans, specifications and any other communication

or documents shall not be deemed to have been submitted to the Architectural Committee, unless actually received by the Architectural Committee. Any vote, election, consent or approval of any nature by the Owners or the Board of Directors, whether hereunder or for any other purpose, may, in the discretion of the Board of Directors and in lieu of a meeting of members, be held by a mail-in ballot process pursuant to the Bylaws.

Section 14.4. Tract Declaration. Declarant and any Builder shall have the right to impose on any portion of the Property owned by Declarant or such Builder a Tract Declaration ("Tract Declaration") in such form as may be approved in writing by Declarant. A Tract Declaration may modify the provisions of Section 12.4 of this Declaration and, to the extent that any Tract Declaration is inconsistent with such provisions of this Declaration, the provisions of such Tract Declaration shall take priority over and control over such provisions of this Declaration. A Tract Declaration may also impose other covenants, conditions, restrictions, easements or other matters to the extent not inconsistent with the provisions of this Declaration.

Section 14.5. Prices. Declarant shall have the right, from time to time, in its sole discretion, to establish and/or adjust sales prices or price levels for new Residential Units and/or Lots.

Section 14.6. Restriction of Traffic. Declarant reserves the right, until the conveyance of title to Purchaser of the last Residential Unit in the Property, to unilaterally restrict and/or re-route all pedestrian and vehicular traffic within the Property, in Declarant's sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Residential Unit shall be deprived of access to a dedicated street adjacent to the Property.

Section 14.7. Other Rights. Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, and, to the extent not expressly prohibited by applicable Georgia law, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under applicable Georgia law.

Section 14.8. Disclaimers and Releases. By acceptance of a deed to a Residential Unit, each purchaser or Owner, for itself and all Persons claiming under such purchaser or Owner, shall conclusively be deemed to have acknowledged and agreed: (a) that Declarant specifically disclaims any and all representations and warranties, express and implied, with regard to any of the disclosed or described matters (other than to the extent expressly set forth in the foregoing disclosures); and (b) to fully and unconditionally release Declarant and the Association, and their respective officers, managers, agents, employees, suppliers and contractors, and their successors and assigns, from any and all loss, damage or liability (including, but not limited to, any claim for nuisance or health hazards) related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to all and/or any one or more of the conditions, activities, occurrences described herein.

Section 14.9. No Discrimination. No action shall be taken by the Declarant, Designated Builder, the Association or the Board of Directors which would discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or disability.

Section 14.10. Indemnification. To the fullest extent allowed by the Georgia Nonprofit Corporation Code, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorneys' fees, imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

Section 14.11. Notice of Sale of Acquisition. Owners must keep the Association apprised of their name, address and telephone number. Accordingly, prior to the sale of a Lot, the Owner shall provide the Association with written notice of the name of the purchaser and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall provide the Association with written notice of the name, mailing address and telephone number of the Owner, the names of the Occupants of the Lot, if any, and such other information as the Board may reasonably require. All Owners shall notify the Association of any change in name, address or telephone number.

Section 14.12. Agreements. Subject to the prior approval of Declarant, all agreements and determinations, including settlement agreements regarding litigation involving the Association that is lawfully authorized by the Board of Directors in accordance with Section 12.4 above, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Project or the privilege of possession and enjoyment of any part of the Project.

Section 14.13. Variances. Notwithstanding anything to the contrary contained herein, the Declarant and the Board of Directors, with the consent of the Declarant, shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated

pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case is warranted and would not be inconsistent with the overall scheme of development for the Project.

Section 14.14. Termination of Rights of Declarant. The rights and easements reserved by or granted to the Declarant and the rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant no longer owns any property in the Project and no longer has the right to unilaterally annex additional property to the Project as provided herein and a certificate of occupancy has been issued for the Residential Unit located on each Lot in the Project; or (b) the date of recording by Declarant in the Cherokee County, Georgia land records of a written instrument terminating all of Declarant's rights hereunder.

Section 14.15. Termination of Rights of Designated Builder. The rights and easements reserved by or granted to a Designated Builder and the rights of a Designated Builder to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that Designated Builder no longer owns any property in the Project and no longer has the option to acquire additional property within the Project; or (b) the date of recording by Designated Builder in the Cherokee County, Georgia land records a written instrument terminating all of Designated Builder's rights hereunder, respectively.

## ARTICLE XV SPECIAL PROVISIONS

Section 15.1. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the property designed to make the property safer than they otherwise might be. However, neither the Association, the Board, the Management Company of the Association, any neighborhood association, Declarant nor any land entity shall in any way be considered insurers or guarantors of security within the property, nor shall any of the above-mentioned parties be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the property (or onsite roving patrol or resources, if applicable) cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.

Each Owner acknowledges, understands, and covenants to inform all occupants of its unit, and their respective families and invitees, that neither the Association, the Board, committees, neighborhood associations, nor all other persons involved with the governance, maintenance, and management of the Property, including Declarant and any land entity, are insurers of safety or security within the Property. All Owners and occupants, and their respective families and invitees, assume all risks of personal injury

and loss or damage to persons, units, and the contents of units, and further acknowledge that neither the Association, its Board and committees, the management company of the Association, any neighborhood association, Declarant nor any land entity have made representations or warranties regarding any attended or unattended entry gate, patrolling of the property, any fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the property. All Owners and occupants, and their respective families and invitees, further acknowledge that they have not relied upon any such representations or warranties, expressed or implied.

Section 15.2. View Impairment. Neither Declarant nor the Association guarantees or represents that any view over and across the open space from adjacent units or other property will be preserved without impairment. Without limiting the foregoing, neither Declarant nor the Association shall have the obligation to relocate, prune, or thin trees or other landscaping except as set forth in Article 5 above. Any express or implied easements for view purposes and/or for the passage of light and air are hereby expressly disclaimed.

Section 15.3. Easement to Inspect and Right to Correct.

(A) Easement. Declarant reserves, for itself and such other persons as it may designate, perpetual, non-exclusive easements throughout the Project, to the extent reasonably necessary for the purposes of access, inspecting, testing, redesigning, correcting, or improving any portion of the Project, including Residential Units and the Common Areas. Declarant shall have the right to redesign, correct, or improve any part of the Project, including Residential Units and the Common Areas.

(B) Right of Entry. In addition to the above easement, Declarant reserves a right of entry onto a Residential Unit upon reasonable notice to the Owner; provided, in an emergency, no such notice need be given. Entry into a Residential Unit shall be only after Declarant notifies the Owner (or occupant) and agrees with the Owner regarding a reasonable time to enter the Residential Unit to perform such activities. Each Owner agrees to cooperate in a reasonable manner with Declarant in Declarant's exercise of the rights provided to it by this Section.

Entry onto the Common Areas and into any improvements and structures thereon may be made by Declarant at any time, provided advance notice is given to the Association; provided, in an emergency, no notice need be given.

(C) Damage. Any damage to a Residential Unit or the Common Areas resulting from the exercise of the easement and right of entry described in subsections (A) and (B) of this Section shall promptly be repaired by, and at the expense of, Declarant. The exercise of these easements shall not unreasonably interfere with the use of any Residential Unit and entry onto any Residential Unit shall be made only after reasonable notice to the Owner or occupant.

Section 15.4. Supplemental Declarations. Supplemental Declaration(s) may, but need not necessarily, be recorded from time to time by Declarant (or with the express prior written consent of Declarant, in its sole discretion). A Supplemental Declaration shall be supplemental to this Declaration, and may create a sub-association, subject additional property to the provisions of this Declaration and/or impose supplemental obligations, covenants, conditions, or restrictions, or reservations of easements, with respect to a particular portion of the Property or other land described in such instrument. This Declaration and any Supplemental Declaration shall be construed to be consistent with each other to the greatest extent reasonably possible; however, in the event of any irreconcilable conflict, the provisions of this Declaration shall prevail. Any purported Supplemental Declaration recorded by a person other than Declarant, without the express prior written consent of Declarant, shall be null and void.

Section 15.5. Sub-Associations. Sub-associations may be created from time to time, to administer to particular portions of the Property; provided that no sub-association may be validly organized except pursuant to the authority and jurisdiction of a supplemental declaration as set forth in Section 15.4 above. A duly created sub-association shall be a supplemental homeowners association, organized pursuant to the authority and jurisdiction of a supplemental declaration, with concurrent and supplemental jurisdiction (subject to this Declaration and the other Project Documents) with the Association with respect to a particular portion of the Property.

A sub-association shall have the power to establish standards and conduct activities for the property under its responsibility, subject to the Property Documents and any documents created in connection with the creation and ongoing operations of the sub-association. Notwithstanding the foregoing, the Association shall have the power and authority to veto any action taken or contemplated to be taken by any sub-association which the Board reasonably determines to be in violation of the Project Documents, or adverse or detrimental to the best interests of the Association, or its Members. The Association also shall have the power to reasonably require specific action to be taken by any sub-association in connection with the sub-association's obligations and responsibilities (for example, without limitation, requiring specific maintenance or repairs, or requiring that a proposed sub-association budget include certain items and that expenditures be made therefor). A sub-association shall take appropriate action required by the Association by written notice, within the reasonable time frame set forth in such notice. If the sub-association fails to so comply, the Association shall have the power and authority to effectuate such action on behalf of the sub-association and to levy special assessments, pursuant to Article 4 of this Declaration, to cover the reasonable costs thereof.

Section 15.6. Freeway/Roadways. The Property is or may be located adjacent to or nearby expressways and/or arterial or major roadways, and subject to levels of traffic thereon and noise, dust, and other nuisance from such roadways and vehicles. Also, each Residential Unit is located in proximity to streets and other Residential Units within the Property, and subject to substantial levels of sound and noise.

Section 15.7. Future Development. Declarant presently plans to develop only those Lots which have already been released for construction and sale, and Declarant has no obligation with respect to future phases, plans, zoning, or development of other real property contiguous to or nearby the Lots presently planned for development. The Owner of a Residential Unit may have seen proposed or contemplated residential and other developments which may have been illustrated in the plot plan or other sales literature in or from Declarant's sales office, and/or may have been advised of the same in discussions with sales personnel; however, notwithstanding such plot plans, sales literature, or discussions or representations by sales personnel or otherwise, Declarant is under no obligation to construct such future or planned developments or units, and the same may not be built in the event that Declarant, for any reason whatsoever, decides not to build same. An Owner is not entitled to rely upon, and in fact has not relied upon, the presumption or belief that the same will be built; and no sales personnel or any other person in any way associated with Declarant has any authority to make any statement contrary to the foregoing provisions.

Section 15.8. Gas Lines. The Property or portions thereof are or may be nearby major regional underground natural gas transmission pipelines.

Section 15.9. Wild Animals. The Property is located adjacent or nearby to certain undeveloped areas which may contain various species of wild creatures (including, but not limited to, bears, coyotes and foxes), which may from time to time stray onto the Property, and which may otherwise pose a nuisance or hazard.

Section 15.10. Construction Nuisances. Residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, traffic, and other construction-related "nuisances." Each Owner acknowledges and agrees that it is purchasing a Residential Unit which is within a residential subdivision currently being developed, and that the Owner will experience and accepts substantial level of construction-related "nuisances" until the subdivision (and other neighboring portions of land being developed) have been completed and sold out.

Section 15.11. Model Homes. Model homes are displayed for illustrative purposes only, and such display shall not constitute an agreement or commitment on the part of Declarant to deliver the Residential Unit in conformity with any model home, and any representation or inference to the contrary is hereby expressly disclaimed. None of the decorator items and other items or furnishings (including, but not limited to, decorator paint colors, wallpaper, window treatments, mirrors, upgraded carpet, decorator built-ins, model home furniture, model home landscaping, and the like) shown installed or on display in any model home are included for sale to a purchaser unless an authorized officer of Declarant has specifically agreed in a written addendum to the purchase agreement to make specific items a part of the purchase agreement.

Section 15.12. Mailbox Easements. Mailbox structures shall be installed at such locations within the Property as Declarant and the U.S. Postal Service determine to be appropriate. If mailbox structures benefiting more than a single Residential Unit are constructed or installed on Lots, an easement shall be deemed to exist over such

portion of the Lot(s) on which such structures are constructed or installed so as to facilitate the use of such mailbox structure by the U.S. Postal Service, the Owners of the Residential Units to be served by such structures, and the Association. All such common mailbox structures shall be Common Areas.

Section 15.13. Trails and Water Features. Trails, paths and water features within the Project are open to the public and the users may produce noise, leave trash, loiter in the area and create other disturbances that may result in inconvenience and disturbances to Owners and Occupants.

Section 15.14. Schools. The Property is located in the vicinity of the Etowah High School and the Booth Middle School and may therefore be subject to noise, traffic, and other factors associated with the use of the school sites.

Section 15.15. Surrounding Commercial Uses. The Property is adjacent to or in close proximity to commercial uses, including but not limited to day care, offices, retail, restaurants, or other uses and may therefore be subject to noise, traffic, lighting, odors, and other factors associated with such uses.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Declarant herein has caused this instrument to be executed under seal, this 2<sup>nd</sup> day of December, 2016

DECLARANT:

**Meritage Homes of Georgia, Inc.**, an Arizona corporation

By: [Signature]  
Name: STEVEN HAINES  
Its: Division President

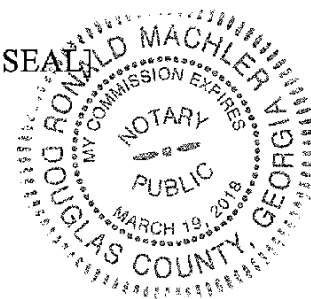
Cobb County, Georgia

[Signature]  
Witness

[Signature]  
Notary Public

(Corporate Seal)

[AFFIX NOTARY SEAL]



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All that tract or parcel of land lying and being in Land Lots 939 and 940 of the 15th District, 2nd Section, City of Woodstock, Cherokee County, Georgia, as shown on that certain ALTA/ACSM Land Title Boundary Survey for Meritage Homes of Georgia, Inc., an Arizona corporation, Parkbrooke Place Partners, LLC, and First American Title Insurance Company, prepared by Mitchell Surveying & Consulting, LLC, containing the seal of Charles R. Mitchell, Georgia Registered Land Surveyor No. 3240, dated September 21, 2016, and being more particularly described as follows:

**BEGINNING** at a #4 rebar located at the intersection of the common corner of Land Lots 939, 940, 1005 and 1006 and the common line between the boundary of property now or formerly owned by Parkbrooke Place Partners, LLC and the boundary of property now or formerly owned by Eagle Glen – Unit I (Plat Book 51, Page 59, Cherokee County, Georgia records); thence along said common boundary line, N88°27'57"W for a distance of 464.95 feet to a point located at the intersection of said boundary line with the southeasterly right of way of Putnam Ford Road (Variable R/W); thence along said southeasterly right of way of Putnam Ford Road in a northeasterly direction the following thirteen (13) courses and distances:

- (i) N43°58'18"E for a distance of 54.28 feet to a point;
- (ii) N73°42'59"E for a distance of 8.06 feet to a point;
- (iii) N43°58'18"E for a distance of 18.00 feet to a point;
- (iv) N10°16'54"E for a distance of 7.21 feet to a point;
- (v) N43°58'18"E for a distance of 50.14 feet to a point;
- (vi) northeasterly 97.37 feet along the arc of a curve, concave to the northwest, having a central angle of 06°36'51", a radius of 843.51 feet, and a chord bearing and distance of N40°39'52"E and 97.32 feet to a point;
- (vii) N66°05'23"E for a distance of 8.26 feet to a point;
- (viii) N36°07'59"E for a distance of 21.74 feet to a point;
- (ix) N06°13'44"E for a distance of 8.27 feet to a point;
- (x) northeasterly 108.05 feet along the arc of a curve, concave to the northwest, having a central angle of 07°20'23", a radius of 843.51 feet, and a chord bearing and distance of N31°14'16"E and 107.98 feet to a point;
- (xi) N89°46'02"E for a distance of 16.65 feet to a #4 rebar;
- (xii) N24°56'08"E for a distance of 286.03 feet to a point;
- (xiii) N25°48'49"E for a distance of 120.27 feet to a p-k nail at the intersection of said southeasterly right of way of Putnam Ford Road (Variable R/W) and the common line between the boundary of property now or formerly owned by Parkbrooke Place Partners, LLC and the boundary of property now or formerly owned by Lucky Real Estate Ventures LLC; thence leaving said right of way and along said common boundary line, S64°28'10"E for a distance of 255.32 feet to a #4 rebar located at the intersection of the boundary of property now or formerly owned by Parkbrooke Place Partners, LLC and the boundary of property now or formerly owned by Michael A. Pecoraro; thence along said common boundary line the following four (4) courses and distances:
- (i) S25°40'23"W for a distance of 282.53 feet to a #4 rebar;
- (ii) S89°48'24"E for a distance of 139.39 feet to a #6 rebar;

(iii) N73°26'19"E for a distance of 143.97 feet to a point;

(iv) N32°56'46"E for a distance of 3.63 feet to the intersection of the common line between the boundary of property now and formerly owned by Parkbrooke Place Partners, LLC and the boundary of property now or formerly owned by Parkbrooke Woodstock, LLC; thence along said common boundary line the following twelve (12) courses and distances:

(i) N51°45'54"E for a distance of 49.54 feet to a point;

(ii) N60°51'47"E for a distance of 56.44 feet to a point;

(iii) N82°36'55"E for a distance of 28.19 feet to a point;

(iv) N48°18'21"E for a distance of 22.38 feet to a point;

(v) N66°03'09"E for a distance of 33.48 feet to a point;

(vi) N64°17'15"E for a distance of 107.84 feet to a point;

(vii) N52°49'57"E for a distance of 20.09 feet to a point;

(viii) S83°24'42"E for a distance of 22.57 feet to a point;

(ix) S76°57'36"E for a distance of 26.43 feet to a point;

(x) N42°44'40"E for a distance of 5.68 feet to a point;

(xi) S80°03'59"E for a distance of 13.81 feet to a point;

(xii) S63°05'37"E for a distance of 49.58 feet to a #4 rebar on the westerly right of way of Parkbrooke Place (60' R/W); thence along said right of way in a southwesterly direction, S13°01'23"W for a distance of 117.07 feet to a point; thence continuing along said right of way, S76°58'37"E for a distance of 30.26 feet to the intersection of said right of way of Parkbrooke Place (60' R/W) and the center of a 24-foot Joint Driveway and Utility and Maintenance Easement; thence along the centerline of said easement and the common line between the boundary of property now or formerly owned by Parkbrooke Place Partners, LLC and the boundary of property now or formerly owned by Henderson Mill Capital Partners LLC the following four (4) courses and distances:

(i) southwesterly 37.69 feet along the arc of a curve, concave to the northwest, having a central angle of 47°20'24", a radius of 45.62 feet, and a chord bearing and distance of S36°39'40"W and 36.63 feet to a point;

(ii) S60°20'04"W for a distance of 21.75 feet to a point;

(iii) southwesterly 36.23 feet along the arc of a curve, concave to the southeast, having a central angle of 60°21'57", a radius of 34.39 feet, and a chord bearing and distance of S30°09'23"W and 34.58 feet to a point;

(iv) S00°09'19"E for a distance of 280.58 feet to the intersection of said easement and common land lot line of Land Lots 940 and 1005, and the common line between the boundary of property now or formerly owned by Parkbrooke Place Partners, LLC and the boundary of property now or formerly owned by Eagle Glen – Unit I (Plat Book 51, Page 59, Cherokee County, Georgia records); thence along said common land lot line and common property line the following two (2) courses and distances:

(i) S89°58'38"W for a distance of 471.39 feet to a #4 rebar;

(ii) S89°58'38"W for a distance of 207.69 feet to a #4 rebar located at the intersection of the common corner of Land Lots 939, 940, 1005 and 1006, said point being the **POINT OF BEGINNING**.

Said tract or parcel of land containing 10.37 acres or 452,174 square feet.

EXHIBIT "B"  
**BYLAWS OF**  
**TOWNE WEST HOMEOWNERS ASSOCIATION, INC.**

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**BYLAWS**  
**OF**  
**TOWNE WEST HOMEOWNERS ASSOCIATION, INC.**

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BYLAWS  
OF  
TOWNE WEST HOMEOWNERS ASSOCIATION, INC.

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BYLAWS  
OF  
TOWNE WEST HOMEOWNERS ASSOCIATION, INC.

Article 1

Name, Membership, Applicability and Definitions

1.1 Name. The name of the corporation shall be Towne West Homeowners Association, Inc. (the "Association")

1.2 Membership. The Association shall have two classes of membership, as more fully set forth in that certain Declaration of Covenants, Conditions and Restrictions for Towne West (as amended, renewed, or extended from time to time, the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

1.3 Definitions. The capitalized terms used in these Bylaws shall have the same meaning as set forth in the Declaration.

Article 2

Association: Meetings, Quorum, Voting, Proxies

2.1 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors, either in the subdivision or as convenient thereto as possible and practical.

2.2 Annual Meetings. There shall be an annual meeting of the members at such date, place and time as the Board of Directors shall determine to receive the reports of the outgoing Board of Directors, to install directors for the ensuing year and to transact such other business as may come before the meeting.

2.3 Special Meetings. The President or the Board of Directors may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association upon the delivery of a petition signed and dated by members entitled to cast at least 25% of the total Association vote and describing the purpose or purposes for which it is to be held. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose(s) thereof. No business shall be transacted at a special meeting, except those matters that are within the purpose or purposes described in the notice.

2.4 Record Date. The Board of Directors shall fix in advance a record date for a determination of members entitled to notice of and to vote at any meeting of members or any adjournment thereof, or to make a determination of members for any other purpose, such date to be not more than seventy (70) days before the date on which the particular action requiring such determination of members is to be taken.

2.5 Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Lot of each member (as shown in the records of the Association as of the record date) a notice of each annual or special meeting of the Association stating the date, time and place where it is to be held and if and to the extent required by the Georgia Nonprofit Corporation Code (O.C.G.A. Section 14-3-101, *et seq.*) or other applicable law (the "Governing Law"), the purpose(s) thereof. If an Owner wishes notice to be given at an address other than the Lot, the Owner shall designate by notice in writing to the Secretary such other address. Such notice shall be delivered personally, sent by United States mail, postage prepaid, statutory overnight delivery, or sent by electronic transmission in accordance with the Nonprofit Code to all members of record at the address shown in the Association's current records. Notices shall be mailed or delivered not less than ten (10) days (or if notice is mailed by other than first-class or registered mail, thirty (30) days) nor more than sixty (60) days before the meeting. If any meeting of the members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If, however, a new record date is or must be fixed under the Governing Law notice of the adjourned meeting shall be given to persons who are members of record as of the new record date.

2.6 Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of lack of notice or defective notice, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.8 Membership List. After the record date for any meeting is established by the Board of Directors, the Secretary shall prepare an alphabetical list of the names and addresses of all of the members who are entitled to notice of the meeting. Beginning at least two business days after notice is given of the meeting for which the list was prepared, the list of members shall be available for inspection by any member or a member's agent or attorney at the Association's principal office or at such other reasonable place as may be specified in the notice. In addition, the list shall be available for inspection at the meeting or any adjournment thereof.

2.9 Voting. The voting rights of the members shall be as set forth in the Articles of Incorporation and the Declaration, and such voting rights are specifically incorporated herein.

2.10 Proxies. At all meetings of members, each member may vote in person or by proxy. All proxy appointment forms shall be in writing, signed either personally or by an electronic transmission, dated, and filed with the Secretary before the appointed time of each meeting. An electronic transmission must contain or be accompanied by information acceptable to the Board

from which it can be determined that the member, the member's agent, or the member's attorney-in-fact authorized the electronic transmission. Proxies may be delivered by personal delivery, U.S. mail or electronic transmission to the Secretary or other officer or agent authorized to tabulate votes. Every proxy shall be revocable and shall automatically cease upon: (a) receipt of notice by the Secretary of the death or judicially declared incompetence of a member; (b) receipt by the Secretary of written revocation signed by the member; (c) receipt by the Secretary of a subsequent appointment form signed by the member; (d) attendance by the member and voting in person at any meeting; or (e) the expiration of 11 months from the date of the proxy appointment form.

2.11 Quorum. The presence, in person or by proxy, of members entitled to cast at least 25% of the votes entitled to be cast at the meeting shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

2.12 Action Without A Formal Meeting. Any action required or permitted to be approved by the members may be approved without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed and dated by members (including the Declarant, if the consent of the Declarant is required) holding the voting power required to pass such action at a meeting held on the record date for such action. The record date for such action shall be the date that the first member signs a consent. Such action shall be approved when the Secretary receives a sufficient number of such consents dated within 70 days of the record date for such action. If less than unanimous consent is obtained, the approval shall be effective ten (10) days after the Secretary gives written notice of the approval to all members who did not sign a consent. Each signed consent shall be included in the minutes of the meetings of members filed in the permanent records of the Association. No written consent shall be valid unless: (1) the consenting member has been furnished the same material that, pursuant to the Nonprofit Code, would have been required to be sent to members in a notice of a meeting at which the proposed action would have been submitted to the members for action; or (2) the written consent contains an express waiver of the right to receive the material otherwise required to be furnished.

2.13 Action by Written Ballot. Any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked. Approval by written ballot of an action shall only be valid when the number of votes cast by ballots equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of members filed in the permanent records of the Association.

Article 3  
Board of Directors: Number, Powers, Meetings

3.1 Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors. Directors shall be natural persons who are 18 years of age or older. Except as provided in Section 3.2, each director must reside in the subdivision and be a member or the spouse of a member; provided, however, no Person may serve on the Board at the same time as such Person's spouse or any co-owner or occupant of such Person's Lot.

3.2 Directors Appointed by Declarant. The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (a) the date on which one hundred (100%) percent of the Lots planned by Declarant to be a part of the community shall have been improved with a dwelling and conveyed to an Owner for occupancy as a residence; or (b) the surrender of Declarant in writing of the authority to appoint and remove directors and officers of the Association. The directors appointed by the Declarant need not be Owners or residents of the community. The total number of Lots planned by Declarant for the community shall initially be the number of Lots shown on the Declarant's land use plan for the development as it may be amended from time to time. Inclusion of property on the land use plan shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land use bar Declarant from subjecting such property to the Declaration. The final number of Lots planned for the community shall be the actual number of Lots shown on the recorded subdivision plats for the community regardless of any different number of Lots shown from time to time on the land use plan. The Declarant shall notify the Association when the final subdivision plat for the community has been recorded.

3.3 Number of Directors. While the Declarant has the right to appoint and remove officers and directors of the Association as provided above, the Board of Directors shall consist of one (1) to three (3) members as determined in writing by the Declarant. Thereafter, the Board may change the number of directors or change the variable range for the size of the Board of Directors by setting a different minimum and maximum number of directors.

3.4 Nomination of Directors. Elected directors may be nominated from the floor, if a meeting is held for the election of directors and may also be nominated by a nominating committee, if established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

3.5 Election and Term of Office. After the Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting (or take action under Section 2.12 or Section 2.13 in lieu of a meeting) and the members shall elect the directors. The two (2) directors receiving the most votes shall be elected for a term of two (2) years and the remaining directors shall hold office for one year and shall continue in office until their respective successors shall have been elected and take office. At annual meetings of the membership thereafter (or pursuant to Section 2.12 or Section 2.13 in lieu of a meeting), directors shall be elected for a term of two (2) years. The candidates receiving the most votes shall be elected.

3.6 Removal of Directors. At any annual, regular or special meeting of the Association, any one or more of the members of the Board of Directors elected by the members may be removed, with or without cause, by a majority of the total association vote and a successor may then and there be elected to fill the vacancy thus created. The notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is removal of a director. A director whose removal by the members has been proposed shall be given an opportunity to be heard at the meeting. Additionally, any director who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the remaining directors.

3.7 Vacancies. Vacancies in the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the majority of the remaining directors. Each Person so selected shall serve the unexpired portion of the term.

3.8 Organization Meetings. The first meeting of a newly elected Board of Directors shall be held within ten (10) days after the election at such time and place as the directors may conveniently assemble.

3.9 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board, provided that, after the right of Declarant to appoint the directors terminates, at least four such meetings shall be held during each fiscal year with at least one per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

3.10 Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, or by any two directors. The notice shall specify the date, time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery (including commercial delivery service) to such director's home or office; (b) written notice by first class mail, postage prepaid; or (c) by telephone communication (including facsimile), either directly to the director or to the director's home or office. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited with the U.S. Postal Service at least four days before the time set for the meeting. Notices given by personal delivery or telephone shall be given at least two days before the day set for the meeting.

3.11 Waiver of Notice. The business transacted at any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to hold the meeting, or an approval of the minutes which is included in the minutes filed with the official records of the Association. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.12 Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes

of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors.

3.13 Compensation. No director shall receive any compensation from the Association for acting as such.

3.14 Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board.

3.15 Executive Session. Notwithstanding Section 3.14 above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, contract negotiation, and orders of business of similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

3.16 Action Without A Formal Meeting. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Association for inclusion in the minutes for filing in the corporate records.

3.17 Telephonic Participation. One or more directors may participate in and vote during any meeting of the Board by telephone conference call or any other means of communication by which all directors participating may simultaneously hear each other during the meeting. Any such meeting at which quorum participates shall constitute a meeting of the Board.

3.18 Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by law, the Declaration, Articles of Incorporation, or these Bylaws directed to be done and exercised by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each member to the Common Expenses;

(b) making Assessments to defray the Common Expenses and establishing the means and methods of collecting such Assessments;

(c) providing for the operation, care, upkeep, and maintenance of all Common Area;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the Assessments and other fees or charges, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending rules and regulations and imposing sanctions for violation thereof, which may include reasonable monetary fines;

(g) opening bank accounts on behalf of the Association and designating the signatories required;

(h) enforcing by legal means the provisions of the Declarations, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the members concerning the Association;

(i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium thereof;

(j) keeping books with detailed accounts of the receipts and expenditures of the Association and the actions thereof, and specifying the maintenance and repair expenses and any other expenses incurred; and

(k) authorization of contracts on behalf of the Association.

3.19 Management Agent. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager. The term of any management agreement shall not exceed one year and shall be subject to termination by either party, without cause and without penalty, upon not more than ninety (90) days written notice.

3.20 Borrowing. The Board of Directors shall have the power to borrow money without the approval of the members of the Association; provided, however, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the total amount of such borrowing exceeds or would exceed ten percent (10%) of the annual budget of the Association.

3.21 Fining and Suspension Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) or a suspension unless and until the following procedure is followed:

(a) Notice. Written notice shall be delivered to the member by first-class or certified mail sent to the address of the member shown on the Association's records, specifying:

(1) the nature of the violation, the fine or suspension to be imposed and the date that the fine or suspension will take effect which shall not be less than ten (10) days from the date of the notice, except for an unapproved sign violation, in which the fine will take effect twenty-four (24) hours from the date of the notice;

(2) that the violator may, within ten (10) days from the date of notice, request a hearing regarding the fine or suspension imposed;

(3) the name, address and telephone numbers of a person to contact to request a hearing;

(4) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and

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

(b) Hearing. If a hearing is requested, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard and present evidence. The minutes of the meeting shall contain a written statement of the results of the hearing. Except for a sign violation, a fine or suspension shall be effective on the date that the decision is made by the Board at the conclusion of the hearing or at a later date that is determined by the Board.

(c) Continuing Violations. 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 violation recurs, the Board may, upon notice stating the nature of the violation and delivered to the member by first class or certified mail sent to the address of the member shown on the Association's records, impose a fine.

#### Article 4 Officers

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two or more offices may be held by the same person. The President and Treasurer shall be elected from among the members of the Board of Directors. This provision shall not apply to officers appointed by the Declarant.

4.2 Election, Term of Office, and Vacancies. Except during the period in which the Declarant has the right to appoint the officers of the Association, the officers of the Association shall be appointed annually by the Board of Directors at the first meeting of the Board of Directors following the election of directors. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

4.3 Additional Officers and Agents. The Board of Directors may appoint such other officers, including vice presidents, assistant secretaries and assistant treasurers, and agents as it shall deem necessary. Such officers and agents shall hold their respective offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

4.4 Salaries. The officers shall receive no compensation; however, the officer shall be entitled to reimbursement for reasonable expenses incurred by them in the performance of their duties upon Board approval of such expenses.

4.5 Removal. Except for officers appointed by the Declarant, any officer may be removed, with or without cause, by the Board of Directors.

4.6 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and directors. The immediate supervision of the affairs of the Association shall be vested in the President. It shall be the President's duty to attend to the business of the Association and maintain strict supervision over all of its affairs and interests. The President shall keep the Board of Directors fully advised about the affairs and conditions of the Association, and shall manage and operate the business of the Association pursuant to and in accordance with such policies as may be prescribed from time to time by the Board of Directors.

4.7 Vice President. The Vice President(s), if any, shall act in the President's absence or disability and shall have all powers, duties, and responsibilities provided for the President when so acting, and shall perform such other duties as shall from time to time be imposed upon any Vice President by the Board or delegated to a Vice President by the President.

4.8 Secretary. The Secretary shall keep the minutes of all meetings of the members and the Board of Directors; notify the members and directors of meetings as provided by these Bylaws and Georgia law; have custody of the seal of the Association; affix such seal to any instrument requiring same; attest the signature or certify the incumbency or signature of any officer of the Association; and perform such other duties as the President, or the Board of Directors may prescribe. The Secretary shall perform the duties of the Treasurer of the Association in the absence or disability of the Treasurer.

4.9 Treasurer. The Treasurer shall keep, or cause to be kept, the financial books and records of the Association, and shall faithfully account for the Association's funds, financial assets, and other assets entrusted to the Treasurer's care and custody. The Treasurer shall make such reports as may be necessary to keep the President and the Board of Directors informed at all times as to the financial condition of the Association, and shall perform such other duties as the President, or the Board of Directors may prescribe. The Treasurer shall maintain the money and other assets of the Association in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. The Treasurer may provide for the investment of the money and other assets of the Association consistent with the needs of the Association to disburse such money and assets in the course of the Association's business. The Treasurer shall perform the duties of the Secretary of the Association in the absence or disability of the Secretary.

4.10 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors. Such resignation shall take effect on the date of the 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.

## Article 5 Committees

Advisory committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. An advisory committee shall not be authorized to exercise any authority of the Board under the Articles of Incorporation, the Declaration, these Bylaws or the Georgia Nonprofit Corporation Code.

## Article 6 Miscellaneous

6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by resolution of the Board.

6.2 Parliamentary Rules. *Roberts 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 or these Bylaws.

6.3 Conflicts. If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation, the Declaration and these Bylaws, the provisions of Georgia law, the Declaration, the Articles of Incorporation and the Bylaws (in that order) shall prevail.

6.4 Amendment. These Bylaws may be amended by the Board of Directors with the consent of the Declarant if such amendment is necessary to (a) bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) enable any title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; (c) enable an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase mortgage loans on the Lots subject to the Declaration; (d) enable any governmental agency or private insurance company to insure or guarantee mortgage loans on the Lots subject to the Declaration; or (e) comply with the provisions of the Georgia Property Owners Association Act, O.C.G.A. §44-3-220, et seq. if the Declaration is amended so that the Association is governed by the Georgia Property Owners Association Act. In addition, these Bylaws may be amended upon the affirmative vote of at least two-thirds (2/3) of the total association vote and the consent of Declarant. Any procedural challenge to an amendment must be made within six (6) months of the effective date of the amendment or such amendment shall be presumed to have been validly adopted.

6.5 Electronic Records, Signatures and Documents. To the extent permitted by Georgia law, the Declaration and these Bylaws, the Association and its members, officers, directors, Owners and Occupants may perform any obligation or exercise any right by use of any technological means providing sufficient security, reliability, identification and verifiability, which technological means have been approved by the Board of Directors in its sole discretion.

Rec: \$25.00

Patty Baker, Clerk of Superior Court - Cherokee County, GA

ParticipantIDs: 3800815138

SPACE ABOVE RESERVED FOR RECORDING DATA

After recording, please return to:

Coulter & Sierra, LLC  
1770 Indian Trail Road, Suite 440  
Norcross, GA 30093  
Attn.: AHB 1980.01

STATE OF GEORGIA  
COUNTY OF CHEROKEE

Cross Reference: Deed Book: 14136  
Page: 2802

**AMENDMENT TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR TOWNE WEST**

THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TOWNE WEST (hereinafter referred to as the "Amendment") is made as of the 17 day of December, 2020 by TOWNE WEST HOMEOWNERS ASSOCIATION, INC., a Georgia nonprofit corporation (hereinafter referred to as the "Association").

**WITNESSETH:**

**WHEREAS**, Meritage Homes of Georgia, Inc., an Arizona corporation, as Declarant, executed and recorded that certain Declaration of Covenants, Conditions and Restrictions for Towne West in Deed Book 14136, Page 2802, *et seq.*, of the Cherokee County, Georgia land records (hereinafter, as may be amended and/or supplemented from time to time, the "Declaration"); and

**WHEREAS**, the Association is a nonprofit corporation organized under the Georgia Nonprofit Corporation Code to be the Association named in the Declaration to have the power and authority set forth therein; and

**WHEREAS**, pursuant to Section 12.3.2 of the Declaration, with written consent of the Declaration and without the vote of the Members the Board of Directors may amend the Declaration for the purpose of electing to be governed by the provisions of the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220 *et. seq.*; and

Rec: \$25.00

Patty Baker, Clerk of Superior Court - Cherokee County, GA

ParticipantIDs: 3800815138

**WHEREAS**, as provided in Section 14.14 of the Declaration, the rights of Declarant to take, approve or consent to actions under the Declaration shall cease and be of no further force and effect upon the earlier of: (a) the date the Declarant no longer owns any property in the Project and no longer has the right to unilaterally annex additional property to the Project as provided herein and a certificate of occupancy has been issued for the Residential Unit located on each Lot in the Project; or (b) the date of recording by Declarant in the Cherokee County, Georgia land records of a written instrument terminating all of Declarant's rights hereunder; and

**WHEREAS**, no consent from Declarant is necessary, as Declarant has affirmatively waived its right to consent, as per that certain letter dated August 31, 2020, attached as Exhibit "A" hereto and made a part hereof; and

**NOW, THEREFORE**, the undersigned hereby adopts this Amendment to the Declaration, hereby declaring that all the property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject to the Declaration, amended as follows:

1.

**Article III of the Declaration is hereby amended by adding a new Section 3.13 to the end thereof to read as follows:**

Section 3.13. Submission to Georgia Property Owners' Association Act; Conflict. The Property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject to the Georgia Property Owners' Association Act, O.C.G.A. 44-3-220, *et seq.* (the "Act") as the Act may be amended from time to time. In the event of a conflict between the provisions of this Declaration and the provisions of the Act, then to the extent that the provisions of the Act cannot be waived by agreement, the Act shall control.

2.

**Unless otherwise defined herein, the words used in this Amendment shall have the same meaning as set forth in the Declaration.**

3.

**This Amendment shall be effective only upon being recorded in the records of the Clerk of Superior Court of Cherokee County, Georgia.**

4.

**Except as herein modified, the Declaration shall remain in full force and effect.**

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

Rec: \$25.00

Patty Baker, Clerk of Superior Court - Cherokee County, GA

ParticipantIDs: 3800815138

IN WITNESS WHEREOF, the Board of Directors has caused this Amendment be executed under seal the day and year first above written.

ASSOCIATION: TOWNE WEST HOMEOWNERS  
ASSOCIATION, INC., a Georgia nonprofit  
corporation

By:

[Signature]

Name:

Derek Whitmer

Its: President

Attest:

[Signature]

Name:

Mercedes Thompson

Its: Secretary

Signed, sealed, and delivered  
This 17<sup>th</sup> day of December, 2020  
in the presence of:

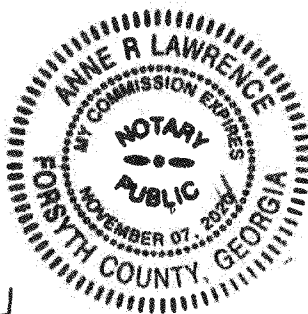
Danita A. Peck

WITNESS

Anne R. Lawrence

NOTARY PUBLIC

My Commission Expires: 11-7-2024  
[AFFIX NOTARY SEAL]



Rec: \$25.00

Patty Baker, Clerk of Superior Court - Cherokee County, GA

ParticipantIDs: 3800815138

**EXHIBIT "A"**



Darrell S. Husband  
Vice President - Regional Counsel  
Darrell.husband@meritagehomes.com  
Direct: 480-515-8984

August 31, 2020

**VIA ELECTRONIC MAIL**

Towne West Homeowners Association, Inc.  
c/o GCM Management Group, LLC  
2120 Highway 81  
Loganville, GA 30052  
Attention: Lisa Brown  
[lbrown@gcmgmt.com](mailto:lbrown@gcmgmt.com)

Re: Association Turnover; Declaration of Covenants, Conditions and Restrictions for Towne West recorded December 7, 2016, as amended (the "Declaration")

To Whom It May Concern:

As you know, Meritage Homes of Georgia, Inc. ("Meritage") is the Declarant under the Declaration. Pursuant to the Declaration, the rights of Meritage as Declarant cease upon, and are of no further force and effect, as of the termination of Class B membership. All homes in the community have been sold to homebuyers. As such, Meritage's rights as Declarant have terminated by the terms of the Declaration. Accordingly, effective as of the date of the Membership Association meeting to be held appointing a new Board of Directors and Officers as provided in the Articles of Incorporation and Bylaws of the Association and the Declaration, Meritage employees currently holding positions as members of the Board of Directors of the Association hereby resign their positions on the Board of Directors with such positions to be filled by individual homeowners.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Darrell Husband', is written over a horizontal line.

Darrell Husband  
Vice President - Regional Counsel