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Shadowbrooke Development, Inc.
P.O. Box 1718
Loganville, GA 30052

**DECLARATION OF COVENANTS, RETRICTIONS
AND EASEMENTS
FOR
SHADOWBROOKE SUBDIVISION
Unit III**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR

SHADOW BROOKE UNIT II

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of the date set forth on the signature page hereof by JCD ENTERPRISES, INC. (THE "DECLARANT")

Whereas, Declarant is the owner of certain real property lying and being in Land Lots 159 and 162 of the 5th Land District of Gwinnett County, Georgia, being more particularly described as that parcel known as Shadow Brooke UNIT II and being recorded in Plat Book _____, Page _____, Gwinnett County Records, which Plat is incorporated herein and made a part of by reference:

Whereas, Declarant intends to develop on lands, including the real property described above, a development to be known as Shadow Brooke UNIT II (hereinafter referred to as the "Development" and;

Whereas, Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined);

NOW, THEREFORE, the Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to this Declaration of Covenants, Conditions and Restrictions, which is for the purpose of enhancing and protecting the desirability and attractiveness of, and shall run with, the real property, and be binding on all parties having any right, title or interest in the described property or any part thereof, and shall subject said parties to all limitations herein provided, and inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

This document does not and is not intended to create a condominium within the meaning of the O.C.G.A. 44-3-70, et seq. Nor a property owners' development within the meaning of the O.C.G.A. 44-3-220, et seq.

ARTICLE 1: DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "ARB": The Architectural Review Board, as described in Article 8.

1.2. "Area of Common Responsibility": The Common Area, together with those areas for which the Association has or assumes responsibility pursuant to the terms of this Declaration or other applicable covenant, contract, or agreement.

1.3. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Shadow Brooke Community Association, Inc., as filed with the Secretary of State of the State of Georgia.

1.4. "Association": Shadow Brooke Community Association, Inc., a nonprofit corporation, its successors or assigns.

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

1.6 "Builder": Any Person who purchases one (1) or more Units for the purpose of constructing improvements for later sale to consumers. Any Person occupying or leasing a Unit for residential purposes shall cease to be considered a Builder with respect to such Unit immediately upon occupancy of the Unit for residential purposes, notwithstanding that such Person originally purchased the Unit for the purpose of constructing improvements for later sale to consumers.

1.7 "By-Laws": The By-Laws of Shadow Brooke Community Association, Inc., as they may be amended.

1.8 "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a Majority of the members of the Board of Directors as provided in Section 3.2.

1.9 "Common Area": All real and personal property, including easements, which the Association owns, leases or holds possessory rights in for the common use and enjoyment of the Owners.

1.10. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by a Majority of the total Class "A" votes of the Association.

1.11. "Community Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the ARB.

1.12. "Days": Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period automatically shall be extended to the close of business on the next regular business day.

1.13. "Declarant": JCD ENTERPRISES, INC. 4A GEORGIA DOMESTIC CORPORATION)

1.14. "General Assessment": Assessments levied on all Units subject to assessment under Article 7 to fund Common Expenses for the general benefit of all Units.

1.15. "Governing Documents": The Declaration, By-Laws, Articles of Incorporation, the rules of the Association, and all additional covenants governing any portion of the Properties or any of the above, as each may be amended from time to time.

1.16. "Majority": Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.17. "Master Plan": The land use plan or development plan for "Shadow Brooke," as such plan may be amended from time to time, which includes the property described on Exhibit "A".

1.18. "Member": A Person subject to membership in the Association pursuant to Section 3.1.

1.19. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of

security instrument affecting title to any Unit.
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- 1.20. "Mortgagee": A beneficiary or holder of a Mortgage.
- 1.21. "Owner": One (1) or more Persons who hold the record title to any Unit, including the Declarant and any Builders, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is owned by more than one (1) person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.
- 1.22. "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.
- 1.23. "Properties": The real property as described on Exhibit "A".
- 1.24. "Public Records": The Clerk of the Superior Court of Gwinnett County, Georgia, or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.
- 1.25. "Special Assessment": Assessments levied in accordance with Section 7.4.
- 1.26. "Specific Assessment": Assessments levied in accordance with Section 7.5.
- 1.27. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, single family detached, and vacant land intended for development as such, but shall not include Common Area or property dedicated to the public.

ARTICLE 2: PROPERTY RIGHTS

- 2.1. Common Area. Every Owner shall have a right and non-exclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Unit, subject to this Declaration and all other Governing Documents. Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.
- 2.2. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property, which may or may not be subject to this Declaration.
- 2.3. Condemnation. The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain or shall be conveyed to the Board in lieu of and under threat of condemnation, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds of such conveyance. The award made for such taking or proceeds of such conveyance shall be payable to the Association and shall be disbursed to the

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Association and used for such purposes as the Board shall determine. Any distribution by the Association of an award or net funds shall be made proportionately to each Unit Owner.

- 2.4. Actions Requiring Owner Approval. The conveyance or mortgaging of Common Area, except in accordance with Section 4.2, shall require the prior approval of at least two-thirds (2/3) of the Class "A" votes held by members other than the Declarant, if the U.S. Department of Housing and Urban Development is insuring the Mortgage on any unit or the U.S. Department of Veteran Affairs is guaranteeing the Mortgage on any Unit. Notwithstanding anything to the contrary in this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

- 3.1 Membership. Every Owner shall be a Member of the Association. There shall only be one (1) membership per Unit. If a Unit is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the By-Laws. All co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of such Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.
- 3.2 Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B".
- (a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one (1) equal vote for each Unit in which they hold interest required for membership under Section 3.1; provided however, there shall be only one (1) vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 7.9. In any situation where there is more than one (1) Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.
- (b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of Class "B" Member, including the right to approve, or withhold approval of actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint a Majority of the members of the Board of Directors during the Class "B" Control Period, which shall continue until the first to occur of the following:
- (i) When seventy-five percent (75%) of the total number of Units permitted by The Master Plan for the Properties have certificates of Occupancy issued thereon and have been conveyed to Persons other than Builders;
 - (ii) December 31, 2010; or
 - (iii) when in its discretion, the Class "B" Member so determines and voluntarily relinquishes such right.

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- (c) Termination of Class "B" Membership. The Class "B" Membership shall expire two (2) years after termination of the Class "B" Control Period. Upon termination of the Class "B" Membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit, if any, which it owns.

ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

- 4.1 Function of the Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating the use of the Properties as the Board may adopt pursuant to Article 9. The Association shall also be responsible for administering and enforcing all the architectural standards and controls set forth in this Declaration. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Georgia.
- 4.2 Personal Property and Real Property for Common Use. The Association may acquire, hold and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibit "A", personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent the Properties were conveyed by Declarant in error or the Properties are needed by Declarant to make adjustments in property lines.
- 4.3 Enforcement. The Board or any committee established by the Board, with the Board's approval, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in the By-Laws. Such sanctions may include, without limitations:
- (a) Imposing monetary fine which shall constitute a lien upon the Unit of the violator (in the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.);
 - (b) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
 - (c) suspending an Owner's right to vote;
 - (d) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association; and

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- (e) levying Specific Assessments to cover costs incurred in bringing a Unit into compliance.

In addition, the Board may elect to enforce any provision of the Governing Documents by entering the Unit and exercising self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, or the correction of any maintenance, construction or other violation of the Governing Documents) by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in the By-Laws.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any Remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county, city, state and federal ordinances, if applicable, and permit local and other governments to enforce ordinances on the Properties for the benefit of the Association and its Members.

- 4.4 **Implied Rights: Board Authority.** The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

- 4.6 **Indemnification.** The Association shall indemnify every officer, director, ARB member and committee member against all damages, liabilities, and expenses, including attorney fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or ARB or other committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and Georgia law.

The officers, directors, and ARB and other committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, misconduct or bad faith. The officers, directors and ARB and other committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, ARB or other committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and ARB and other committee member harmless from any and all liability to others on account of any such conduct, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or ARB or other committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

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- 4.6 Dedication of or Grant of Easement on Common Area: The Association may dedicate or grant easements across portions of the Common Area to Gwinnett County, Georgia, or to any other local, state, or federal governmental or quasi-governmental entity.
- 4.7 Security: The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors or security within the Properties, nor shall any of them 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 security system or measures 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 its tenants and all occupants of its Units that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

ARTICLE 5: MAINTENANCE

5.1 Association's Responsibility.

- (a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which shall include, but need not be limited to:
- (i) all Common Area;
 - (ii) all landscaping and other flora situated upon the Common Area;
 - (iii) all sidewalks installed by the Declarant in the Properties;
 - (iv) the fence surrounding the perimeter of the Properties; and
 - (v) the detention area located along Units 13, 14, 15, 16, 17, 18, 33 and 34 as shown on the Master Plan.

The Association may, as a Common Expense, maintain other property and improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary to desirable to maintain the Community-Wide Standard.

The Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Class "B" Control Period except with the written consent of the Declarant.

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

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- 5.2 **Owners Responsibility.** Each Owner shall maintain his or her Unit, and all structures, parking areas, sprinkler and irrigation systems, landscaping and other flora, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association. Each Owner shall maintain the driveway and mailbox serving his or her Unit and all landscaping located in the right-of-way immediately adjacent to the Owner's Unit. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.
- 5.3 **Standard of Performance.** Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Neither the Association nor any Owner shall be liable for any damage or injury occurring on, or arising out of the condition of, property which such Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

ARTICLE 6: INSURANCE AND CASUALTY LOSSES

6.1 **Association Insurance.**

- (a) **Required Coverage's.** The Association, acting through its Board or its duly authorized Agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverage's are reasonably available:
- (i) Blanket property insurance covering "all risks" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurance improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements and shall have a maximum deductible of the lesser of \$5,000.00 or ten percent (10%) of the face amount of the policy;
 - (ii) Commercial general liability insurance on all public ways located within the Properties and on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and all umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal

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Injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain additional coverage's or limits;

- (iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;
- (iv) Directors and officers liability coverage;
- (v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth ($1/6^{\text{th}}$) of the annual General Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusions of Persons serving without compensation; and
- (vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance.

In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency ("FEMA") as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area must be maintained in the amount of one hundred percent (100%) of current "replacement cost" of all effected improvements and other insurance property or the maximum limit of coverage available, whichever is less.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the General Assessment. In the event of an insured loss, the deductible shall be treated as a Common Expense and assessed in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of negligence or willful misconduct of one (1) or more Owners, their guests, invitee, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 7.5.

- (b) **Policy Requirements.** The Association shall arrange for periodic reviews of the sufficiency of insurance coverage by qualified Persons.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Member upon request. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a).

- (i) All insurance coverage obtained by the Board shall:
 - (1) be written with a company authorized to do business in the State of Georgia which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

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- (2) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;
 - (3) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
 - (4) include an agreed amount endorsement, if the policy contains a co-insurance clause;
 - (5) contain an endorsement requiring at least thirty (30) Days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.
- (c) **Damage and Destruction.** Immediately after damage or destruction to all or any part of the property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and during the Class "B" Control Period the Declarant decide within sixty (60) Days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) Day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional Days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2 **Owners Insurance.** By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement costs of all insurable improvements on his or her Unit, less a reasonable

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deductible, unless the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner thereof pursuant to Section 7.5.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or compromising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such plans and specifications as are approved in accordance with Article 8. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs, which are not covered by insurance proceeds.

ARTICLE 7: ASSESSMENTS

7.1 **Creation of Assessments.** There are hereby created assessments for the Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Units; (b) Special Assessments as described in Section 7.4; and (c) Specific Assessments as described in Section 7.5. Each Owner, by accepting a deed or in entering into a contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, costs of collection and reasonable attorneys fees, shall be a charge and continuing lien upon each Unit against which the assessment or charge is made until paid, as more particularly provided in Section 7.6. Each such assessment or charge, together with interest, late charges, costs, and reasonable attorney fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remaining remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of an assessment a written statement signed by an Association officer setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials, provided that no Mortgagee shall be required to collect assessments on behalf of the Association. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for

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inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

7.2 **Declarant's Obligation for Assessments.** During the Class "B" Control Period, the Declarant may annually elect to pay either (a) an amount equal to the assessments on all of its unsold Units, notwithstanding the commencement date set forth in Section 7.7; or (b) the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing prior to the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligation hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, the Declarant shall pay assessments on any unsold Units in the same manner as any other Owner.

7.3 **Computation of General Assessments.** Before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a contribution to establish a reserve fund, shall be levied equally against all Units subject to assessment, and the assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall send a copy of the budget and notice of the amount of the General Assessment to each Owner. Such budget and assessment shall become effective unless disapproved at a meeting by at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during Class "B" Control Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the By-Laws, which petition must be presented to the Board within twenty (20) Days after delivery of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

7.4 **Special Assessments.** In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses in excess of those budgeted. Any such Special Assessment may be levied against all Units, if such Special Assessment is for Common Expenses. Special Assessments shall be allocated equally among all Units subject to such Special Assessment. Any Special Assessment shall become effective upon the approval of a Majority of Members who are subject to such Special Assessment and are present, in person or by proxy, at a special meeting called for such purposes, and during the Class "B" Membership, by the Declarant. During Class "B" Membership, any special Assessment shall require the written consent of Declarant. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

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7.5 **Specific Assessments.** The Association shall have the power to levy Specific Assessments against a particular Unit or Units as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, janitorial service, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and
- (b) to cover costs incurred in bringing the Unit(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b).

7.6 **Lien for Assessments.** The Association shall have a lien against each Unit to secure payment of delinquent assessment and other charges, as well as interest at a rate to be set by the Board (subject to the maximum interest rate limitations of Georgia law), late charges in such amount as the Board may establish (subject to the limitations of Georgia law), costs of collection and reasonable attorney fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Unit owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment, including such acquirer, its successors and assigns.

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

7.7 **Date of Commencement of Assessments.** The obligation to pay assessments shall commence as to each Unit on the earlier date which the Unit is conveyed to a Person

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other than a Builder or Declarant or occupied by any Person. The first annual General Assessment levied on each Unit shall be paid, as applicable (I) at the closing of the sale to a Person other than a Builder or Declarant, or (II) immediately upon demand by the Association based on the date of occupancy of the Unit for residential purposes. Notwithstanding anything contained herein to the contrary, a Builder holding any Unit for one (1) year after the purchase shall be obligated to pay the annual assessment for such Unit, commencing with the first day of the month after the first anniversary of the Builder's purchase of the Unit. The first annual General Assessment shall be adjusted according to the number of months in the fiscal year at the time assessments commence on the Unit.

- 7.8 **Failure to Assess.** If a proposed budget is disapproved or if the Board fails to establish assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.
- 7.9 **Exempt Property.** The following property shall be exempt from payment of General Assessments and Special Assessments: (a) All Common Area; and (b) Any property dedicated to and accepted by any governmental authority or public utility.
- 7.10 **Capitalization of Association.** Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant or a Builder or upon occupancy of a Unit, a contribution shall be made by or on behalf of the purchaser or occupant to the working capital of the Association. The amount of such contribution shall be equal to One Hundred and 0/100 Dollars (\$100.00). This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Association at closing of the purchase and sale of the Unit to the first Owner, or if the obligation to make the capital contribution arises by virtue of occupancy of a Unit by a Person, the capital contribution shall be paid immediately upon demand by the Association. Capital contributions shall be used by the Association in covering operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

ARTICLE 8: ARCHITECTURAL STANDARDS

- 8.1 **General.** No exterior structure or improvement shall be placed, erected, installed or made upon any Unit or adjacent to any Unit where the purpose of the structure is to service such Unit except in compliance with this Article, and with the prior written approval of the ARB.

Any Owner may remodel, paint or redecorate the interior of structures on his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

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This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association. This Article may not be amended during the Class "B" Control Period without the Declarant's written consent.

8.2 **Architectural Review.** Responsibility for review of all applications for construction and modifications under this Article shall be handled by the ARB, the members of which need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ARB. The ARB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ARB in having any application reviewed by architects, engineers or other professionals. The number of members of the ARB shall be set by the Board. The ARB shall have exclusive jurisdiction over all construction on any portion of the Properties. Until one hundred percent (100%) of the Units have certificates of occupancy issued by the building department of Gwinnett County, Georgia, the Declarant shall have the right to appoint all members of the ARB. Thereafter the Board shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

8.3 **Procedures.** Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARB for review. In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable and as required by the ARB. In reviewing each submission, the ARB may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time.

In the event that the ARB fails to approve or to disapprove any application within thirty (30) Days after submission of all information and materials reasonably requested, the application shall be deemed approved.

8.4 **Exterior Structures and Improvements.**

(a) Exterior structures and improvements shall include, but not be limited to, staking, clearing, excavation, grading and other site work; initial construction of any dwelling or accessory building; exterior alteration of existing improvements; installation or replacement of mailboxes; swing sets and similar sports and play equipment; clotheslines; garbage cans; wood piles; swimming pools; gazebos or playhouses; window air-conditioning units or fans; hot tubs; wells; solar panels; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; hedges, walls, dog runs, animal pens, or fences of any kind, including invisible fences; artificial vegetation or sculpture; and planting or removal of landscaping materials. Notwithstanding the foregoing,

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the Declarant and the Association shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all federal laws and regulations.

- (b) In addition to the foregoing activities requiring prior approval, the following items are strictly regulated, and the ARB shall have the right, in its sole discretion, to prohibit or restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless approval or a waiver in writing is obtained.

(i) Signs. Except as provided herein, no sign of any kind shall be erected by an Owner or occupant. Owners or occupants may erect or place on a Unit (a) such signs as may be required by legal proceedings; (b) "For Rent" or "For Sale" sign not to exceed two feet (2') by two feet (2') on any unit being offered for sale or for lease; and (c) one (1) political campaign sign not to exceed two feet (2') by two feet (2') for such time periods as established by the ARB. Signage of any kind placed on Property must be approved by the ARB.

(ii) Tree Removal. No trees that are more than six (6) inches in diameter at a point two (2) feet above the ground shall be removed without the written consent of the ARB; provided however, any diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons may be removed without the written consent of the ARB. The ARB may adopt or impose requirements for, or condition approval of, tree removal upon replacement of any tree removed.

(iii) Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Unit; (2) one (1) approved decorative post light; (3) pathway lighting; (4) seasonal decorative lights during the usual and common season; or (5) front house illumination.

(iv) Temporary or Detached Structures. No accessory buildings, storage buildings or outbuildings shall be placed or erected on any Unit. No mobile home, trailer home, travel trailer, camper or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Unit except in a garage. The ARB may permit construction trailers during initial construction, provided that all such construction trailers must be removed prior to completion of initial construction of all Units.

(vi) Standard Mailboxes. All dwellings within the Properties shall have standard mailboxes conforming to postal regulations and the guidelines for such mailboxes adopted by the ARB. By accepting a deed to a Unit, each Owner agrees that the ARB may remove any non-approved mailbox; all costs for same shall be paid by Owner of such Unit, and all claims for damages caused by the ARB are waived.

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- 8.5 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.
- 8.6 Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the Declarant, the Association nor the ARB shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board nor ARB shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit.
- 8.7 Enforcement. The ARB shall have the right, during reasonable hours and after reasonable notice, to enter upon any Unit to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this Article. Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the ARB, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the ARB shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the ARB by any means of enforcement described in Section 4.3. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment.

ARTICLE 9: USE RESTRICTIONS

- 9.1 General. This Article sets out certain use restrictions, which must be complied with by all Owners and occupants of any Unit. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, model homes, sales offices for Builders, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibit "A", business offices for the Declarant or related parking facilities) consistent with this Declaration.
- 9.2 Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled,

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canceled, or modified in a regular or special meeting by a Majority of the Members, and, during the Class "B" Control Period, the written consent of the Declarant.

- 9.3 Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned.
- 9.4 Leasing. Units may be leased for residential purposes only. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing.
- 9.5 Residential Use. All Units shall be used for residential purposes of a single family and for ancillary business or home office uses. A business or home office use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the activity conforms to all zoning requirements for the Properties; (c) the activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other invitees or door-to-door solicitation of residents of the Properties; (d) the activity does not increase traffic or include frequent deliveries within the Properties; and (e) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

No other business, trade, or similar activity shall be conducted upon a Unit without the prior written consent of the Board. 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: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units, which it owns within the Properties, including the operation of a timeshare or similar program.

- 9.6 Occupancy of Unfinished Units. No dwelling erected upon any Unit shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the dwelling being fully completed.
- 9.7 Vehicles.
- (a) Automobiles of any nature whatsoever shall be parked only in the garages or on the driveways, if any, serving the Units. No automobile of any nature may be left upon any portion of the Properties, except in a garage, if it is unlicensed or if it is

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In a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Properties.

- (b) Recreational vehicles shall be parked only in the garages, if any, serving the Units. The term recreational vehicles, as used herein, shall include, without limitation, motor homes, mobile homes, boats, jet skis or other watercraft, trailers, other towed vehicles, motorcycles, minibikes, scooters, go-carts, golf carts, campers, buses, commercial trucks and commercial vans. Any recreational vehicle parked or stored in violation of this provision in excess of seven (7) Days during any calendar days shall be considered a nuisance and may be removed from the Properties.
- (c) Service and delivery vehicles may be parked in the Properties during daylight hours for such periods of time as are reasonably necessary to provide service or to make a delivery within the Properties.
- (d) All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt.

9.8 **Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Unit, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. No animals shall be kept, bred or maintained for commercial purposes without prior written Board approval. All pets shall be reasonably controlled by the owner whenever outside a Unit and shall be kept in such a manner as to not become a nuisance by barking or other acts. The owners of the pet shall be responsible for all of the pet's actions. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, such animal shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 4.3.

9.9 **Nuisance.** It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit 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 Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security

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purposes or as approved by the ARB, shall be located, installed or maintained upon the exterior of any Unit unless required by law.

This Section shall not apply to any development, construction or sales activities conducted or permitted by the Declarant.

- 9.10 Storage of Materials, Garbage, Dumping, Etc. All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash or garbage; petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff. No lumber, metals, bulk materials, refuse, trash or other similar materials shall be kept, stored, or allowed to accumulate outside the buildings on any Unit, except during the initial construction period of the improvements to the Unit.
- 9.11 Combustible Liquid. There shall be no storage of gasoline, propane, heating or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment and except as may be approved in writing by the ARB. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.
- 9.12 Hunting and Guns. The discharge of firearms on the Properties is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types. 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.
- 9.13 Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed after a subdivision plat including such Unit has been approved and filed in the Public Records without the Declarant's prior written consent. Declarant, however, hereby expressly reserves the right to re-plat any Unit or Units which it or any Builder owns, with the written prior consent of the owner of the Unit or Units affected. Any such division, boundary line change, or re-platting shall not be in violation of the applicable subdivision and zoning regulations, if any.
- 9.14 Basketball Goals. Basketball goals must be permanent fixtures and must be approved by the ARB.
- 9.15 Drainage and Grading.
- (e) Catch basins and drainage areas are for the purpose of natural flow of water only. No improvements, obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

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- (b) Each Owner shall be responsible for maintaining all drainage areas located on its Unit. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas.
- (c) Each Owner shall be responsible for controlling the natural and man-made water flow from its Unit. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Properties with excessive water flow from its Unit. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from Unit. Neither the Association nor the Declarant bears any responsibility for remedial actions to any Unit.
- (d) No Person shall alter the grading of any Unit without prior approval pursuant to Article 9 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.
- (e) All persons shall comply with any and all applicable city, county and state erosion control ordinances in construction of improvements on any Unit and in conducting any activity within non-disturbance buffer zones.

ARTICLE 10: EASEMENTS

Declarant reserves, creates, establishes, promulgates and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, the Association, the Members and the Owners.

10.1 Easements of Encroachment. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Units, and between each Unit and any adjacent Common Area, due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

10.2 Easements for Utilities, Etc.

- (a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself during the Class "B" Control Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable television systems, master television antenna systems, and other devices for

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sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

Declarant may assign to the local water supplier, electric company, telephone company, and natural gas supplier the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself, during the Class "B" Control Period, non-exclusive, perpetual, reciprocal, appurtenant, easements, and the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of the Properties.

(c) Any damage to a Unit resulting from the exercise of the easements described in subsection (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit, and except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

10.3 **Easement for Entry.** Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal easements for the Association to enter upon any Unit for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association's officers, committee members, agents, employees and managers of the Association, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement includes the right to enter any Unit to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

10.4 **Easements for Maintenance and Enforcement.** Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal easements for the Association to enter all portions of the Properties, including each Unit, to (a)

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perform its maintenance responsibilities under Article 5, and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Unit shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense. Entry under this Section shall not constitute a trespass.

The Association also may enter a Unit to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys' fees, may be assessed against the violator as a Specific Assessment.

- 10.5 **Lateral Support.** Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area, every Unit, and any improvement which contributes to the lateral support of another portion of the Common Area, or of another Unit, for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.
- 10.6 **Liability for Use of Easements.** No Owner shall have a claim or cause of action against the Declarant, its successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

ARTICLE 11: MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

- 11.1 **Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:
- (a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
 - (b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) Days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within sixty (60) Days;
 - (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

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(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

11.2 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the first Mortgagees or at least sixty-seven percent (67%) of the Members of the Association vote consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (neither the conveyance of property in accordance with Section 4.2 nor the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall be deemed a transfer within the meaning of this subsection);

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

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

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

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

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

11.3 Other Provisions for First Lien Holders. To the extent not inconsistent with Georgia law:

(a) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible

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Holders of first Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

- 11.4 Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association as a result of destruction, damage, or condemnation.

(a) The consent of at least sixty-seven percent (67%) of the Class "A" votes and, during the Class "B" Control Period, of the Declarant, and the approval of the Eligible Holders of first Mortgages on Units to which at least sixty-seven percent (67%) of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

(b) The consent of at least sixty-seven percent (67%) of the Class "A" votes and, during the Class "B" Control Period, of the Declarant, and the approval of Eligible Holders of first Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, By-Laws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

(i) voting;

(ii) assessments, assessment liens, or subordination of such liens;

(iii) imposition of General Assessments of one hundred twenty-five percent (125%) or more of the previous year's General Assessment;

(iv) reserves for maintenance, repair and replacement of the Common Area;

(v) insurance or fidelity bonds;

(vi) rights to use the Common Area;

(vii) responsibility for maintenance and repair of the Properties;

(viii) expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association;

(ix) convertibility of Units into Common Area or vice versa;

(x) boundaries of any Unit;

(xi) leasing of Units;

(xii) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;

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- (xiii) establishment of self-management by the Association where professional management has been required by an Eligible Holder;
- (xiv) any provisions included in the Declaration, By-Laws, or Articles of Incorporation, which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units;
- (xv) termination of the Association; or
- (xvi) restoration or repair of Common Area.
- 11.5 **No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.
- 11.6 **Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.
- 11.7 **HUD/VA Approval.** As long as there is a Class "B II" membership, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development, so long as it is insuring the Mortgage on any Unit, or the U.S. Department of Veterans Affairs, so long as it is guaranteeing the Mortgage on any Unit; merger, consolidation or dissolution of the Association; annexation of additional property other than the Additional property, dedication, conveyance or mortgaging of Common Area except in accordance with Section 4.2; or material amendment of this Declaration, the By-Laws or the Articles.
- 11.8 **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.
- 11.9 **Construction of Article 11.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or law for any of the acts set out in this Article.

ARTICLE 12: DECLARANT'S RIGHTS

- 12.1 **Transfer or Assignment.** Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations.

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No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

- 12.2 **Development and Sales.** The Declarant and Builders authorized by Declarant may maintain and carry on the Properties such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, such as sales activities and promotional events, and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area. The Declarant and authorized Builders shall have easements over the Properties for access, ingress and conducting such activities.

In addition, the Declarant and Builders authorized by Declarant may establish within the Properties, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, including, but not limited to, business offices, signs, model units, tents, sales offices, sales centers and related parking facilities. Owners may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant and authorized Builders shall have easements over the Properties for access, ingress, and egress and use of such facilities.

Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any use fees.

- 12.3 **Improvements to Common Areas.** The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.
- 12.4 **Additional Covenants.** No person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.
- 12.5 **Amendments.** Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules made after termination of the Class "B" Control Period shall be effective without prior notice to and the written consent of the Declarant, for so long as the Declarant or any Builder remains a Class "A" Member. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.
- 12.6 **Annexation.** Declarant shall have the option and right, from time to time, without the necessity of consent of the Association, the Board or the Owners, to submit all or portions of any Additional Property to this Declaration and thereby cause the Additional Property, or such portions thereof, to become part of the Property.

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ARTICLE 13: GENERAL PROVISIONS

13.1 Duration. Except as otherwise limited by Georgia law, this Declaration shall have perpetual duration. If Georgia law limits the period during which covenants may run with the land, then this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

13.2 Amendment.

(a) By Declarant. Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the total Class "A" votes in the Association, including sixty-seven percent (67%) of the Class "A" votes held by Members other than the Declarant, and, during the Class "B" Membership, the written consent of the Declarant.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege.

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If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

- 13.3 **Severability.** Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.
- 13.4 **Litigation.** Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the total Association vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 7; (c) proceedings involving challenges to ad valorem taxation; (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.
- 13.5 **Non-Merger.** Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.
- 13.6 **Grants.** The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted in this Declaration.
- 13.7 **Cumulative Effect; Conflict.** The provisions of this Declaration shall be cumulative with any additional covenants and restrictions.
- 13.8 **Use of the Words "Shadow Brooke".** No Person shall use the words "Shadow Brooke" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Shadow Brooke" in printed or promotional matter where such terms are used solely to specify that particular property is located within Shadow Brooke and the Association and any other community association located on shall be entitled to use the words "Shadow Brooke" in its name.
- 13.9 **Notice of Sale or Transfer of Title.** Any Owner desiring to sell or otherwise transfer title to a Unit shall give the Board at least seven (7) Days' prior written notice of the name and

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address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

- 13.10 Minimum Square Footage of Units. The minimum required square footage for the Units are as follows:

- (a) One Story Unit is 1600 square feet heated floor area
- (b) Two Story Unit is 1800 square feet heated floor area

- 13.11 Exhibits. Exhibit "A" attached to this Declaration is incorporated by this reference.

ARTICLE 14: PROTECTIVE COVENANTS

- 14.1 As Specified on the Final Plat recorded in the county of Gwinnett, State of Georgia, the Protective Covenants listed as followed are hereby incorporated herein these Declarations and may enforced by the Declarant, a Builders, the Association, and any Owner of a Unit or Lot and shall remain in force and effect until the 28th day on November, 2025:

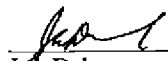
- (a) Lots shall be for single family detached dwellings and accessory uses only;
- (b) No Lot shall be subdivided, nor shall more than one house be erected on any one Lot.
- (c) No residence shall be erected on any one lot to have less than 1600 square feet of heated floor area for a one story plan and no less than 1800 square feet of heated floor area for a two story plan;
- (d) No temporary house, shack, tent, or trailer shall be erected or placed on any lot as a residence, school, church, kindergarten or day care center;
- (e) No house shall be erected or remodeled on any lot to be used as a church, school or kindergarten or day care center;
- (f) All County Zoning Ordinances and restrictions applicable to this Property shall be observed;
- (g) All houses shall have a two car garage and a 16 foot minimum wide driveway for a distance of 20 feet from the garage entrance;
- (h) All front yards shall be sodded;
- (i) The exterior of every dwelling shall be concrete or vinyl siding with brick fronts. Declarant reserves the right to approve all exterior finishes;
- (j) Exits/Entrances shall be in accordance with the Gwinnett County Department regulations and subject to the approval of the Development Division;

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- (k) No direct Lot access shall be allowed to Oak Grove Rd.;
- (l) Provide underground utilities
- (m) The soil erosion and sediment control ordinance requires that a 25 foot buffer adjacent to all State waters be maintained (Article 4 Section 4.3 Paragraph 15) an exemption is granted to Homeowners who perform minor land disturbance activities such as landscaping, home gardens, repairs, and maintenance work (Article 3, Section 3.1, Paragraph 3)
- (n) Dissolving the Home Owner's Association, unless approved by the Gwinnett County Board of Commissioners, is prohibited.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 7 day of Dec, 2006

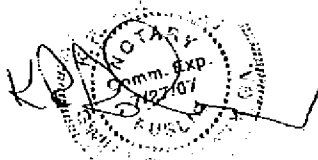
DECLARANT:
Shadowbrooke Development, Inc.



J.C. Dukes



Katherine A. Betterton
UNOFFICIAL WITNESS



BY-LAWS
OF
SHADOW BROOKE COMMUNITY ASSOCIATION, INC.

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BY-LAWS
OF
SHADOW BROOKE COMMUNITY ASSOCIATION, INC.

ARTICLE 1: NAME, PRINCIPAL OFFICE, AND DEFINITIONS

1.1 **Name.** The name of the corporation is Shadow Brooke Community Association, Inc. (the "Association"), a Georgia nonprofit corporation.

1.2 **Principal Office.** The principal office of the Association shall be located in the State of Georgia. The Association may have such other offices, either within or outside the State of Georgia as the Board of Directors may determine or as the affairs of the Association may require.

1.3 **Definitions.** The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Shadow Brooke filed in the Public Records, as it may be amended (the "Declaration"), unless the context indicates otherwise.

ARTICLE 2: ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

2.1 **Membership.** The Association shall have two (2) classes of membership. Class "A" and Classes "B," as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated herein by reference.

2.2 **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at other such suitable place convenient to the Members as the Board may designate, either within the Properties or as convenient as is possible and practical.

2.3 **Annual Meetings.** The first meeting of the Association, whether a regular or special meeting shall be held approximately one (1) year from the issuance of the first certificate of occupancy for a Unit in the Development. Meetings shall be of the Members. Subsequent regular meetings shall be held annually on a date and at a time set by the Board.

2.4 **Special Meetings.** The president may call special meetings. In addition, it shall be the duty of the President to call a special meeting within thirty (30) days if so directed by resolution of the Board or upon a petition signed by Members representing at least twenty (20%) percent of the total Class "A" votes in the Association or upon written request of the Declarant.

2.5 **Notice of Meetings.** Written notice stating the place, day and time of any meeting of the Members shall be delivered to each Member entitled to vote at such meeting, not less than ten (10) nor more than thirty (30) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or person calling the meeting. In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of meeting shall be deemed delivered when deposited in the United States mail addressed to the Membership that the address appearing on the records of the Association.

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 shall be deemed a waiver by such Member of any objection as to notice of the time, date and place thereof, unless Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Member representing a Majority of the votes represented at such meeting 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 the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not set by those in attendance at the original meeting or if for any reason a new date is set for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

2.8 Voting. The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference. The Board may adopt policies and procedures regarding the methods of casting votes, such as written ballots, secret ballots or computer access.

2.9 Proxies. Any Member who is entitled to cast only the vote(s) for such Member's Unit(s) pursuant to the Declaration may cast such vote in person or by proxy. Such vote may be cast in person (if a corporation, partnership, limited liability company, or trust, through any officer, director, partner, member, manager or fiduciary duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Georgia law relating to use of general proxies and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing specifying the Unit(s) for which it is given, signed by the Member or such Member's duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member is giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Unit for which it was given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or eleven (11) months from the date of proxy, unless a shorter period is specified in the proxy.

2.10 Quorum. The presence of twenty percent (20%) of the Class "A" votes entitled to be cast 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, provided that any action taken is approved by at least a Majority of the votes required to constitute a quorum.

2.11 Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.12 Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by all Members entitled to vote on such matter. Such consent shall be signed within sixty (60) days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business in the State of Georgia. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members summarizing the material features of the authorized action.

ARTICLE 3: BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

A. Composition and Selection.

3.1 Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) equal vote. Except with respect to directors appointed by the Class "B" Member or serving as a representative of the Declarant, the directors shall be eligible Members or residents; provided however, no Owner and resident representing the same Unit may serve on the Board at the same time. No Owner or resident shall be eligible to serve as a director if any assessment for such Owner's or resident's Unit is delinquent. A "resident" shall be any natural person eighteen-(18) years of age or older whose principal residence is a Unit within the Properties. In the case of a Member which is not a natural person, any officer, director, partner, member, manager, employee, or fiduciary of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member, provided that no Member may have more than one(1) such representative on the Board at a time, except in the case of directors appointed by or serving as a representative of the Class"B" Member or Declarant.

3.2 Number of Directors. The Board shall consist of three (3) directors.

3.3 Directors During Class"B" Control Period. Subject to the provisions of Section 3.5, during the Class "B" Control Period, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class"B" Member. Directors appointed by or serving as a representative of the Class"B" Member or the Declarant shall not be subject to the qualifications for directors set forth in Section 3.1.

3.4 Nomination and Election Procedures.

(a) **Nomination of Directors.** The Board may establish a nominating committee. If established, a nominating committee shall make as many nominations for election to the Board as it shall in its discretion to determine, but in no event less than the number of positions to be filled as provided in Section 3.5 below. Nominations shall also be permitted from the floor at a meeting of the Members. All candidates shall have a reasonable opportunity to communicate their qualification to the Members and to solicit votes.

(b) **Election Procedures.** Each Member entitled to vote may cast one vote for each Director position up for election. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5 Election and Term of Office After the Class "B" Control Period.

(a) At the first (1st) annual meeting after the termination of the Class "B" Control Period, the Association shall hold an election at which the Members shall be entitled to elect all three (3) directors, two of whom shall serve for terms of two (2) years and one of whom shall serve for a term of one (1) year.

(b) Upon the expiration of the term of office each director elected by the Members, the Members shall elect a successor to serve for a term of two (2) years. The directors elected by the Members shall hold office until their respective successors have been elected.

The Declarant may assign the right to appoint one (1) or more directors to the Members prior to the termination of the Class "B" Control Period, in the Declarant's sole discretion.

3.6 Removal of Directors and Vacancies. Any director elected by the Members may be removed, with or without cause, by Members representing a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members to fill that vacancy for the remainder of the term of such director.

Any director elected by the Members who has three (3) or more consecutive unexcused absences from Board Meetings, or who is more than thirty (30) days delinquent (or is the resident of a Unit that is delinquent, or is an officer, director, partner, member, employee, or trust officer of a member who is delinquent) in the payment of any assessment or other charges due the Association, may be removed by a Majority of the directors, and the Board may appoint a successor to fill the vacancy until the next annual meeting, at which time the Members elect a successor for the remainder of the term.

In the event of the death, disability, or resignation of an elected director or a vote to increase the number of directors, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such directorship may elect a successor for the remainder of the term. Any director that the Board appoints shall be selected from among Members.

This section shall not apply to directors appointed by the Class "B" Member nor to any director serving as a representative of the Declarant. The Class "B" Member or the Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member or the Declarant.

B. Meetings.

3.7 Organizational Meetings. Within ten (10) days after the election or appointment of new directors, the Board shall hold an organizational meeting at such time and place as the Board shall set.

3.8 Regular Meetings. Regular meetings of the Board may be held at such time and place as a Majority of the directors shall determine, but at least one (1) such meeting shall be held during each quarter.

3.9 Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the president or vice president or by any two-(2) directors.

3.10 Notice. Notice of the time and place of a regular meeting shall be communicated to directors not less than four (4) days prior to the meeting. Notice of the time and place of a special meeting shall be communicated to directors not less than seventy-two (72) hours prior to the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. Notices shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; (d) telecopier transmissions to the director's home or office, with confirmation of receipt by the receiving telecopier; (e) telegram, charges prepaid; (f) overnight or same day delivery, charges prepaid; or (g) e-mail using Internet accessible equipment and services if the director has consented in writing to such method of delivery and has provided the Board with an e-mail address. All such notices shall be given at the director's telephone or telecopier number to be sent to the directors' address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal, overnight or courier delivery, telephone, telecopier, or telegraph shall be deemed communicated when delivered, telephoned, telecopied or given to the telegraph company

3.11 Waiver of Notice. The transactions of any meeting of the Board, 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 holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall 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 Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of telephone conference, video conference or similar communications equipment, by means of which all persons participating in the conference or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

3.13 Quorum of Board of Directors. At all meetings of the Board, 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, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a Majority of the directors present at such meeting may adjourn the meeting to a time not less than four (4) nor more than twenty (20) days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.14 Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a Majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a Majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering

- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts.
- (d) No remuneration shall be accepted by the managing agent from venders, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any item of value received shall benefit the Association.
- (e) Any financial or other interests which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
- (f) An annual financial report shall be made available to all Members within one hundred twenty (120) days after the close of the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines; provided however, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement; and
- (g) Monthly statements for each account maintained on behalf of the Association must be provided to the Association by the financial institution holding the account.

3.23 Borrowing. The Association shall have the power to borrow money for any legal purpose; provided however, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall obtain the approval of Members representing at least sixty-seven percent (67%) of the total votes allocated to Units prior to borrowing such money.

3.24 Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, within and outside the Properties; provided, any common management agreement shall require the consent of a Majority of the total number of directors of the Association,

3.25 Enforcement.

- (a) Notice. Prior to imposition of any sanction requiring compliance with these procedures as set forth in the Declaration, the Board or its delegate shall serve the alleged violator with written notice including (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator may present a written request for a hearing to the Board or the covenants committee, if one has been appointed pursuant to Article 5, within fifteen (15) days of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within fifteen (15) days of the notice. If a timely request is not received, the sanction stated in the notice shall be imposed; provided however, the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fifteen (15) day period. Such suspension shall not constitute a

waiver of the right to sanction future violations of the same or other provisions and rules by any Person. In the event of a continuing violation, each day the violation continues beyond the fifteen (15) day period shall constitute a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which results within one (1) year from the date of any notice hereunder, the Board may impose a sanction without further notice to the violator.

- (b) **Hearing.** If a hearing is requested within the allotted fifteen (15) day period, the hearing shall be held before the covenants committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or delegate who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any imposed.
- (c) **Appeal.** If a hearing is held before a covenants committee, the violator shall have the right to appeal the committee's decision to the Board. To exercise this right, a written notice of appeal must be received by the manager, president, or secretary of the Association within fifteen (15) days after the hearing date.

ARTICLE 4: OFFICERS

4.1 Officers. The officers of the Association shall be a president, secretary, and treasurer. The president and secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more assistant secretaries and one (1) or more assistant treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two (2) or more offices may be held by the same person, except the offices of president and secretary.

4.2 Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

4.3 Removal and Vacancies; The Board may remove any officer whenever in its judgment the best interests of the Association will be served and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise for the unexpired portion of the term.

4.4 Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The president shall be the chief executive officer of the Association. The treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The secretary shall be responsible for preparing the minutes of meetings of the Members and the Board and for authenticating records of the Association.

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

6.5 Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

- (a) If to a Member, at the address which the Member has designated in writing and filed with the secretary or, if no such address has been designated, at the address of the Unit of such Member; or
- (b) if to the Association, the Board or managing agent, at the principal office of the Association or the Managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

If mailed, any notice shall be deemed to be delivered when deposited in the United State Mail addressed with postage prepaid. To increase flexibility, any Person, including the Association, may consent to or request additional methods of receiving notice, including but not limited to, facsimile or internet e-mail.

6.6 Amendment.

- (a) By Declarant. The Declarant may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. In addition, during the Class "B" Control Period, the Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member.
- (b) By the Board. The Board shall be authorized to amend these By-Laws without the consent of the Members for the purpose of submitting the Properties to the Georgia Property Owners Association Act O.C.G.A. 44-3-220, et seq. (1994) and conforming these By-Laws to any mandatory provisions thereof. During the Class "B" Control Period, any such amendment shall require the consent of the Declarant.
- (c) By Members. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the total Class "A" votes in the Association, and during the Class "B" Control Period, the written consent of the Declarant.
- (d) Validity and Effective Date. Any amendment to these By-Laws shall become effective upon adoption, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its adoption or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provision of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege.

- (e) HUD/VA Approval. Notwithstanding the foregoing, so long as there is a Class "B" Membership, the U.S. Department of Veteran Affairs ("VA") is guaranteeing a mortgage on any Unit, or the U.S. Department of Housing and Urban Development ("HUD") is insuring a mortgage on any Unit, HUD and VA shall have the right to veto any amendment to these By-Laws.

If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority to consent and no contrary provision in any Mortgage or contract between the Member and a third party will effect the validity of such amendment.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting secretary of Shadow Brooke Community Association, Inc., a Georgia nonprofit corporation.

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the ____ day of _____, 2002.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this ____ day of _____, 2002.

_____(SEAL)
Secretary