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AMENDED AND RESTATED  
DECLARATION OF PROTECTIVE COVENANTS  
FOR  
BERKELEY WALK

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THE MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION AND PROPERTY DESCRIBED HEREIN IS SUBJECT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220, *ET SEQ.*

AMENDED AND RESTATED  
 DECLARATION OF PROTECTIVE COVENANTS  
 FOR BERKELEY WALK

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AMENDED AND RESTATED

DECLARATION OF PROTECTIVE COVENANTS

FOR BERKELEY WALK

**THIS AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR BERKELEY WALK** (hereinafter called the "Declaration") is made by **BERKELEY WALK COMMUNITY ASSOCIATION, INC.**, a Georgia nonprofit corporation (hereinafter called the "Association"), and the Owners of Lots within the Community, as those terms are hereinafter defined.

**W I T N E S S E T H**

**WHEREAS**, John Wieland Homes, Inc., a Georgia corporation, as Declarant, executed that certain Declaration of Protective Covenants for Berkeley Walk which was recorded on May 3, 1994 in Deed Book 10271, Page 45, *et seq.*, Gwinnett County, Georgia land records; as amended by that certain Amendment to Declaration of Protective Covenants for Berkeley Walk, recorded June 27, 1994 at Deed Book 10445, Page 32, *et seq.*, aforesaid records; and as further amended by that certain Amendment to the Declaration of Protective Covenants for Berkeley Walk, recorded March 21, 2011 at Deed Book 50594, Page 311, *et seq.*, aforesaid records, which amendment submitted the Community to the provisions of the Georgia Property Owners' Association Act, O.C.G.A Section 44-3-220, *et seq.* (hereinafter as supplemented and/or amended from time to time, collectively referred to as the "Original Declaration"), together with the Bylaws of Berkeley Walk Community Association, Inc., which were attached to the Original Declaration as Exhibit "D" and recorded therewith (hereinafter as amended from time to time, referred to as the "Original Bylaws"); and

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

**WHEREAS**, the Association and the members thereof desire to amend the Original Declaration and Original Bylaws as set forth herein and intend for such amendments to be prospective only; and

**WHEREAS**, pursuant to Article XII, Section 4 of the Original Declaration, the Original Declaration may be amended upon the affirmative vote, written consent or any combination thereof of Owners of at least two-thirds (2/3) of the Lots and the consent of Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community); and

**WHEREAS**, pursuant to Article VI, Section 4 of the Original Bylaws, the Original Bylaws may be amended in accordance with the amendment provisions of the Original Declaration; provided, however, the U.S. Department of Veterans Affairs ("VA") (if it is then guaranteeing any Mortgage in the Community as determined by telephone inquiry to VA) and/or the U.S. Department of Housing and Urban Development ("HUD") (if it is then insuring any

Mortgage in the Community as determined by consulting the current list of approved subdivisions regularly published by HUD and furnished to Mortgage companies) shall have the right to veto material amendments to the Original Bylaws for as long as the Declarant has the right to appoint and remove the directors and officers of the Association; and

**WHEREAS**, Owners of at least two-thirds (2/3) of the Lots agreed to amend the Original Declaration and Original Bylaws as provided herein; and

**WHEREAS**, attached hereto as Exhibit "A" and incorporated herein by reference is the sworn statement of the incumbent Secretary of the Association which sworn statement states unequivocally that the consent of Owners of at least two-thirds (2/3) of the Lots was lawfully obtained to amend the Original Declaration and Original Bylaws, respectively, and that any notices required under the Original Declaration, Original Bylaws or Georgia law were given; and

**WHEREAS**, Declarant does not own any property for development and/or sale in the Community, does not have the right unilaterally to annex additional property to the Community, and no longer has the right to appoint and remove the officers and directors of the Association;

**NOW THEREFORE**, the Association and the Lot Owners hereby amend the Original Declaration and Original Bylaws by deleting the same in their entirety and in their place adopting this Declaration and the Amended and Restated Bylaws of Berkeley Walk Community Association, Inc., attached as Exhibit "C" hereto and by this reference incorporated herein, hereby declaring that all of the property now or hereafter subject to the Original Declaration and Original Bylaws shall be held, sold, transferred, conveyed, used, occupied, mortgaged and otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens, hereinafter set forth, which are for protecting the value and desirability of and which shall run with the title to, the real property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of the real property now and hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each owner of all or any portion thereof, as follows:

Article 1  
Definitions

The following words, when used in this Declaration or in any Supplementary Declaration, shall have the following meanings:

1.1 "Act" means the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.*, as may be amended from time to time.

1.2 "Articles of Incorporation" means the Articles of Incorporation of Berkeley Walk Community Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference, as may be amended from time to time.

1.3 "Association" means Berkeley Walk Community Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

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

1.5 "Bylaws" means the Amended and Restated Bylaws of Berkeley Walk Community Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference, as may be amended from time to time.

1.6 "Common Property" means any and all real and personal property, including, without limitation, the Community recreational facilities, easements and other interests therein, and the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.7 "Community" refers to that certain real property described in Exhibit "B", attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein.

1.8 "Community-Wide Standard" means the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association and may be delineated in part by the rules and regulations of the Association and the Design Guidelines.

1.9 "Design Guidelines" means the architectural and/or landscaping guidelines promulgated by the Board of Directors or Architectural Control Committee, as the case may be, as more particularly set forth in Article 6 hereof

1.10 "Lot" means any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes a single-family dwelling site, as shown on the subdivision plat(s) for the Community recorded in the land records of Gwinnett County, Georgia. The ownership of each Lot shall include, and there shall pass with the title to each Lot as an appurtenance thereto, whether or not separately described, all of the rights and interests of an Owner in the Common Property, as herein provided, together with membership in the Association.

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

1.12 "Mortgagee" means the holder of a Mortgage.

1.13 "Occupant" means any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.14 "Owner" means the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

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

1.16 "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.

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

## Article 2

### Property Subject To This Declaration

2.1 Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants, conditions, restrictions and easements hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and encumbered subject to this Declaration is all of the real property previously subjected to the Original Declaration, as the same may be more particularly described in Exhibit "B" attached hereto and by this reference made a part hereof.

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



Article 3  
Association Membership and Voting Rights

3.1 Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the spouse of a member, but in no event shall more than one (1) office be held for each Lot owned. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association.

3.2 Voting. Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) Person holds an ownership interest in a Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or referendum. The vote attributable to a Lot shall be suspended in the event more than one (1) Person seeks to exercise it. The Board of Directors may suspend the voting rights of an Owner for any period during which any past due assessment against any Lot of the Owner remains unpaid; and for a reasonable period of time for an infraction of the Declaration, Bylaws, rules and regulations, use restrictions or Design Guidelines.

Article 4  
Assessments

4.1 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of all of the Lot Owners, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments; (b) special assessments; and (c) specific assessments. All sums lawfully assessed by the Association against any Lot Owner or Lot, whether for the share of the common expenses pertaining to that Lot, for fines, or otherwise, including without limitation, late charges (not in excess of the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the amount due, or such higher amount as may be authorized by the Act from time to time), interest (at a rate not in excess of ten percent (10%) per annum on the principal amount due, or such higher amount as may be authorized by the Act from time to time), costs of collection, reasonable attorneys' fees actually incurred and, if the Board so elects, the fair rental value of the Lot, and all reasonable charges made to any Lot Owner or Lot for materials furnished or services rendered by the Association at the Owner's request to or on behalf of the Lot Owner or Lot, shall, from the time the same become due and payable, be the personal obligation of the Person who was the Owner of the Lot at the time the assessment fell due and

constitute a continuing lien in favor of the Association on the Lot prior and superior to all other liens whatsoever except: (i) liens for ad valorem taxes on the Lot; (ii) the lien of any first priority mortgage covering the Lot and the lien of any Mortgage recorded prior to the recording of this Declaration; and (iii) the lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Lot. Pursuant to the Act, the recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings.

No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot or nonuse of the Common Property, including, without limitation, nonuse of the Community recreational facilities. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments. As provided in O.C.G.A. Section 44-3-232, the obligation for the payment of assessments and fees arising hereunder shall include the costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2).

4.3 Budget. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the annual assessment to be levied against each Lot for the year to be delivered to each member at least thirty (30) days prior to the due date of such annual assessment. The budget and the annual assessment shall become effective unless disapproved at a meeting duly called and held by a majority of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget has been determined, as provided herein, the budget in effect shall continue.

4.4 Annual Assessments. Annual assessments shall be levied equally on all Lots and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in one (1) annual installment. Annual assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. Annual assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for

utilities provided by the Association, if any, cleaning and janitor services, landscape maintenance, costs incurred to operate and maintain the Community recreational facilities, and any Community entry features including irrigation and lighting for the same, and expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others.

4.5 Special Assessments. The Association, acting through the Board of Directors, may levy a special assessment against all Lot Owners for unbudgeted or unanticipated expenses or expenses in excess of those budgeted without a vote of the Association so long as the total amount of such special assessments allocated to a Lot does not exceed Three Hundred and No/100 Dollars (\$300.00) in a single fiscal year. In the event the Board levies a special assessment in an amount greater than Three Hundred and No/100 Dollars (\$300.00) in a single fiscal year then such special assessment must be approved by a majority of the Total Association Vote in order to become effective, except as provided in Section 9.3 hereof. Special assessments shall be paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.6 Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Lots or significantly disproportionately benefit all the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; or (b) expenses of the Association occasioned by the conduct of less than all of those entitled to occupy all of the Lots, or by the Occupant(s), licensees or invitees of any such Lot(s), may be specifically assessed against such Lot(s).

4.7 Subordination of Liens to Mortgages. The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage placed on a Lot if, but only if, all assessments and charges with respect to such Lot authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the Lot pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the Lot pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination and shall not relieve the Owner of the Lot of the personal obligation to pay all assessments coming due during such period of ownership; shall not relieve such Lot from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer

of such Lot to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of such Lot of any personal obligation or relieve such Lot or the then Owner of such Lot from liability for any assessment authorized hereunder that becomes due after such sale and transfer.

4.8 Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and as provided in the Act, such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge (not in excess of the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the amount due, or such higher amount as may be authorized by the Act from time to time), interest (at a rate not in excess of ten percent (10%) per annum on the principal amount due, or such higher amount as may be authorized by the Act from time to time) and costs of collection, including, without limitation, reasonable attorney's fees actually incurred. The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a claim of lien with the Office of the Clerk of Superior Court of Gwinnett County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments. Each Owner, by acceptance of a deed, vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property, including, without limitation, the right to use and enjoy the Community recreational facilities, the right to receive and enjoy such services and other benefits as may then be provided by the Association, if any. Any such suspension shall not affect such Owner's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such Lot in favor of the Association. As provided in O.C.G.A. Section 44-3-232, the obligation for the payment of assessments and fees arising hereunder shall include the costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2).

4.9 Date of Commencement of Assessments. Assessments shall commence as to all Lots when the Board of Directors first determines a budget and levies assessments. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide.

4.10 Failure to Assess. Notwithstanding anything herein to the contrary, the omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to 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 assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

4.11 Estoppel Certificate. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association or its managing agent setting forth the amount of assessments past due and unpaid, including any late charges, interest, fines, or other charges against that Lot. Such request shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee not to exceed Ten and No/100 Dollars (\$10.00), or such higher amount as may be authorized by the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein.

## Article 5

### Maintenance Responsibility: Common Property and Lots

5.1 Association's Maintenance Responsibility. The Association shall maintain and keep in good repair the Common Property, which shall include, without limitation, maintenance, repair and replacement of all landscaping and improvements situated thereon. The Association shall also maintain (whether or not constituting Common Property) the following: (a) all Community entry features, including entry area landscaping, signage and monuments regardless of whether or not the same are located on a Lot, Common Property or public right-of-way and any irrigation system and lighting system, if any, provided to such Community entry features; (b) landscaping improvements located on the Common Property, if any; (c) the storm water detention/retention pond(s) and storm water drainage facilities located on the Common Property, if and to the extent such facilities are not maintained on an on-going basis by a government entity; provided, however, the Association shall not be responsible for any storm water drainage facilities or any pipes, wires or conduits which are located on and exclusively serve a Lot; and (d) the Community recreational facilities. The Board shall also have the right, but not the obligation, to maintain, repair or replace all mailboxes or mailbox posts located within the Community, as determined by the Board in its sole discretion.

The Board of Directors may authorize the officers of the Association to enter into contracts with any Person or Persons to perform maintenance hereunder on behalf of the Association. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such maintenance would benefit Owners. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the

responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, shall be assessed against the Owner as a specific assessment.

## 5.2 Owner's Maintenance Responsibility.

(a) General. All maintenance of the Lot and all structures, landscaping, and other improvements located thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard, this Declaration and any rules and regulations adopted by the Board or applicable Design Guidelines. The obligation of a Lot Owner hereunder shall include, without limitation, the following: (i) prompt removal of all litter, trash, refuse, and waste; (ii) keeping improvements and exterior lighting clean, attractive and in good repair and working order, including, without limitation, periodic painting, pressure washing and/or mildew removal as needed; (iii) keeping driveways, walkways and other concrete improvements in good repair; (v) complying with all governmental health and police requirements; (v) maintaining the grading and storm water drainage as originally established on the Lot; and (vi) repairing exterior damages to structures and other improvements. Each Owner shall promptly report to the Association any defect or need for repairs for property or improvements for which the Association is responsible.

(b) Landscaping Responsibility. In addition to the maintenance responsibilities set forth in subsection (a) above, Lot Owners shall be responsible for all landscaping and lawn maintenance to a Lot, which shall include, but not be limited to, the following: (i) lawn mowing on a regular basis; (ii) tree and shrub pruning; (iii) watering landscaped areas; and (iv) keeping lawn and garden areas alive, free of weeds, and attractive.

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

5.3 Partition. The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Lots located within the Community.

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

5.5 Liability. Owners, Occupants and their guests shall use the common areas maintained by the Association and all other Common Property and all portions of the Community not contained within a Lot, including, without limitation, the Community recreational facilities, at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. All Owners and Occupants shall have an affirmative duty and responsibility to inspect the Common Property and all portions of the Community not contained within a Lot, including, without limitation, the Community recreational facilities, for defects, perils or other unsafe conditions relating to the use and enjoyment thereof. The Association and its officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person occurring, nor for loss or damage to personal belongings used or stored on the Common Property or any other portion of the Community.

The Association shall not be liable for injury or damage to any Person or property (a) caused by the elements or by an Owner or any other Person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association or from any portion of the Common Property, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or Occupant or guest thereof for loss or damage, by theft or otherwise, of any property thereof.

## Article 6 Architectural Standards

Except to the extent the same may be a violation of any provision of the Original Declaration, any alterations, changes or modifications to architecture or landscaping originally installed on Lots as of the date this Declaration is recorded in the Gwinnett County, Georgia land records shall be deemed an approved change pursuant to this Article.

6.1 General. No exterior construction, alteration or addition of any improvements of any nature whatsoever including, without limitation, staking, clearing, excavating, grading, filling, construction of impervious surfaces, building, exterior alteration of existing improvements, changing the exterior color of any existing improvement, adding permanent exterior lighting (except for reasonable seasonal decorative lights displayed during the usual and common season, as the same may be determined from time to time by the Board of Directors), and planting and

removing landscaping materials (except for seasonal planting and landscaping consistent with the Community-Wide Standard and any applicable Design Guidelines), shall be commenced or placed upon any part of the Community unless, approved in accordance with this Article, or otherwise expressly permitted under this Declaration. Any Owner may remodel, paint or redecorate the interior of structures on the Lot without approval hereunder. However, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Lot shall be subject to approval. No approval shall be required to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to improvements made to the Common Property by or on behalf of the Association.

6.2 Guidelines and Procedures. Except as provided above, no exterior construction, addition, alteration or modification shall be made unless and until plans and specifications shall have been submitted in writing to and approved by the Board of Directors. Such plans and specifications shall be of sufficient detail to allow the Board to make its review and to the extent required by the Board shall show the nature, kind, shape, height, materials and location of the proposed improvement. The Board of Directors shall be the sole arbiter of such plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. If the Board of Directors fails to approve or to disapprove submitted plans and specifications within sixty (60) days after receipt of all required plans and specifications, such approval shall be deemed to have been given. If construction does not commence on a project for which plans have been approved within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the Board of Directors for reconsideration. As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration. In the discretion of the Board of Directors, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Board of Directors and its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to determine whether or not these restrictive covenants have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such entry.

6.3 Design Guidelines. The Board of Directors shall have the authority to prepare and amend, from time to time at its sole discretion, architectural guidelines, landscaping guidelines, fencing guidelines and any application and review procedures applicable to the Community (collectively the "Design Guidelines"), which may provide for payment of any reasonable cost associated with the review of submitted plans and specifications, including, without limitation, an administrative fee. The Board of Directors shall make the Design Guidelines available to Owners who seek to engage in construction upon all or any portion of the Community and such Owners shall conduct their operations strictly in accordance therewith. Notwithstanding anything to the contrary herein, the Design Guidelines shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote.



6.4 Limitation of Liability. Plans and specifications are not approved for engineering or structural design, quality of materials or for compliance with permitting requirements, building codes or local laws and ordinances governing construction in the Community and it shall be the responsibility of the Owner to secure any necessary permits or approvals prior to commencing any construction activity on a Lot in the Community. The Association, the ACC and the Board assume no liability or responsibility by approving any plans or specifications or for any defect in any structure constructed from such plans and specifications or for violations of permitting requirements, building codes or other local laws or ordinances governing construction in the Community. Neither the Association, nor the officers, directors, members, employees and agents of the Association shall be liable in damages to anyone submitting plans and specifications for approval or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans and specifications and every Owner agrees that such Person or Owner will not bring any action or suit against the Association or its officers, directors, members, employees and agents to recover any damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

6.5 No Waiver. The approval of the Board of Directors, as applicable, of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval or consent of the Board shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications or drawings or matters whatever subsequently or additionally submitted for approval or consent.

6.6 Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration and the Design Guidelines if it determines that waiver of application or enforcement of the provision in a particular case is dictated by unique circumstances, such as, but not limited to, topography, natural obstructions, hardship, aesthetic considerations or environmental considerations. No variance shall: (a) be effective unless in writing, (b) be inconsistent with the overall scheme of development for the Community, or (c) estop the Board of Directors from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.7 Enforcement. Any structure, improvement or landscaping improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board of Directors, Owners shall, at their own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board and its agents shall have the right to enter the property, remove the

nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, reasonable attorney's fees actually incurred, may be assessed against the Lot as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the Board of Directors from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws. Neither the Association nor its officers, directors, members, employees and agents shall be held liable to any Person for exercising the rights granted by this Section, including, without limitation, claims for damages resulting from the removal of the nonconforming structure or improvement in accordance with the procedures set forth herein. In addition to any other remedies available to the Association and the Board, in the event of noncompliance with this Article, the Board may record in the appropriate land records a notice of violation hereunder naming the violating Owner. The Board of Directors shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article, including, without limitation the right to levy and collect fines as provided herein, subject to any applicable notice provisions contained in the Bylaws.

6.8 Architectural Control Committee. The Board of Directors shall have the sole right, power and authority under this Article. Notwithstanding the foregoing, the Board of Directors may, but has no obligation to, establish an Architectural Control Committee ("ACC"), which shall then have such rights, powers and authority as may be granted to it by the Board of Directors, including the responsibility of reviewing and approving building and construction activity within the Community. The Board of Directors may grant the ACC all of its rights, powers and authorities hereunder, or may grant the ACC such limited rights as it deems appropriate in its sole discretion. In the event that all or any portion of such rights, powers and authorities are granted to the ACC, this Article or portions thereof, as appropriate, shall then be read and interpreted as if any reference to the Board of Directors in this Article 6 were a reference to the ACC. Notwithstanding anything herein to the contrary, the Board of Directors shall have the sole right and authority to appoint and remove the members of the Architectural Control Committee and the members of the ACC shall serve at the sole discretion of the Board.

## Article 7 Use Restrictions and Rules

7.1 Rules and Regulations. The Board of Directors may, from time to time and without a vote of the members, promulgate, modify or delete reasonable rules and regulations applicable to the Community. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote.

7.2 Residential Use. Each Lot shall be used for residential purposes exclusively. Leasing of a Lot for residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing at the Lot may conduct business activities within the house so long as the business activity: (a) does not otherwise violate the provisions of the Declaration, Bylaws or rules and regulations of the Association; (b) is not apparent or detectable by sight, sound or smell

from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; (h) does not threaten the security or safety of other residents of the Community; and (i) does not involve door-to-door solicitation within the Community, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms "business" and "trade", as used in this Section, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity.

7.3 Signs. No sign of any kind shall be erected or displayed within the Community without the prior written approval pursuant to Article 6 hereof, except: (a) one (1) professional security sign consistent with the Community-Wide Standard not to exceed six inches (6") by six inches (6") in size; (b) such signs as may be required by legal proceedings; and (c) one (1) professionally lettered "For Sale" sign or "For Rent" sign not to exceed two feet (2') by two feet (2') in size displayed in connection with a Lot being offered for sale or for rent. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs on behalf of the Association and the right to adopt reasonable rules and regulations governing the display of signs in the Community, which may include imposing reasonable time, place and manner restrictions. The provisions of this Section shall not apply to any Mortgagee in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure.

7.4 Vehicles; Parking. Vehicles shall be parked only in appropriate parking spaces serving the Lot or other designated parking areas established by the Board, from time to time, if any. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term "appropriate parking spaces serving the Lot" shall refer to the number of garage parking spaces of each Lot. No on-street parking or parking in any driveway serving a Lot or parking on the Common Property shall be permitted for periods longer than twenty-four (24) continuous hours, except with prior written Board approval, which approval shall not be unreasonably withheld and the temporary removal of the vehicle to comply with the twenty-four hour period shall not be sufficient to establish compliance with this provision. All parking shall be subject to such further reasonable rules and regulations as the Board may adopt from time to time. All homes shall contain a garage; carports shall not be permitted. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage. Garages shall be used for parking of vehicles and shall not be used primarily for storage or other purposes. Garages shall not be converted to additional living space unless the same has been approved pursuant to Article 6 hereof. No vehicle may be left upon any portion of the Community, except in a garage, if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways.

No towed vehicle, boat, personal watercraft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go-cart, golf cart, commercial vehicle, camper, bus, mobile home or any vehicle which is thirty (30) feet or more in length shall be regularly stored in the Community or temporarily kept in the Community, except if kept in an enclosed garage or other area out of view from neighboring Lots and public streets or other area designated by the Board, if any, for a period of longer than twenty-four (24) hours (the temporary removal of such vehicle to break the continuity of the twenty-four (24) hours shall not be sufficient to establish compliance with this restriction). Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

If any vehicle is parked on any portion of the Common Property, in a fire lane or on any landscaped or grassy area in violation of this Section or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity that will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

7.5 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats or other household pets in a reasonable number as determined by the Board from time to time; provided, however, in no event shall the number of pets allowed pursuant to this Section exceed such number as may be allowed pursuant to any applicable Gwinnett County, Georgia ordinances and regulations. No pets shall be kept, bred or maintained for any commercial purpose. No dog runs, runners, or exterior pens for household pets shall be erected or maintained on any Lot unless approved in accordance with the provisions of Article 6 hereof. Pets shall at all times when outside the dwelling on a Lot or on the Common Property be supervised and be kept on a leash or otherwise under physical control. All pets shall be registered, licensed and inoculated if and as required by law. Animal control authorities shall be permitted to enter the Community to patrol and remove unlicensed pets. An Owner shall not allow any animal waste to remain on any portion of a Lot or any other portion of the Community. Pet waste deposited on a Lot or any other portion of the Community must be immediately removed and disposed of by the owner of the pet or the person responsible for the pet. The Association may adopt reasonable rules and regulations designed to minimize damage and disturbance to other Owners and Occupants, including regulations requiring damage deposits, waste removal, leash controls, noise controls, and occupancy limits based on the size and facilities of the Lot.

The Board may require that any animal which, in the Board's sole opinion, endangers the health or safety of any Owner or Occupant, or creates a nuisance or unreasonable disturbance, be permanently removed from the Community upon seven (7) days written notice. If the Owner or occupant fails to do so, the Board may remove the animal and all costs associated with such

removal shall be a specific assessment against the Lot. Any animal which, in the Board's sole discretion, presents an imminent danger to the health, safety or property of any Person may be removed by the Board without prior notice to the animal's owner and all costs associated with such removal shall be a specific assessment against the Lot. Any Owner or Occupant who keeps or maintains any animal within the Community shall be deemed to have agreed to indemnify and hold harmless the Association and its directors, officers, employees and agents from and against any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such animal within the Community.

7.6 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Lot. No Lot shall be used for the storage of anything that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property within the Community. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. Without limiting the generality of the foregoing, no horns, whistles, sirens, bells, alarms, amplifiers or other sound devices, mechanical or otherwise which create or produces excessively loud sounds, except such devices as may be used exclusively for security purposes, screaming, shouting, excessively loud talking, fighting, raucous behavior, insobriety, playing loud music or television, use of any alarm, equipment or device, vibrations or any other conduct which creates any noxious or offensive odors outside a home shall be permitted, located, used, placed, installed or maintained on any Lot, or any portion thereof. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board.

7.7 Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken in any part of the Community except within a garage located on a Lot or other area designated by the Board.

7.8 Antennae. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting audio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Lot and the dwelling located thereon, unless approved in accordance with the provisions of Article 6 hereof; provided, however, no such approval shall be necessary to install the following on a Lot: (a) antennae designed to receive direct broadcast satellite services, including direct-to-home satellite services or to receive or transmit fixed wireless signals via satellite that are one meter or less in diameter; (b) antennae designed to receive video programming services via multi-point distribution services or to receive or transmit fixed wireless signals other than via satellite that are one meter or less in diameter or diagonal

measurement; or (c) antennae that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae in such location so that it is screened from view of neighboring Lots or Common Property and, unless an acceptable quality signal cannot otherwise be obtained, on the rear of the dwelling located on the Lot. Any permitted antennae shall be installed and maintained only in accordance with Federal Communication Commission ("FCC") rules and the Design Guidelines, both as may be amended from time to time; provided, however, that to the extent that the Design Guidelines may conflict with the rules and regulations of the FCC, the applicable rules and regulations of the FCC shall control.

7.9 Tree Removal. The Association and Owners shall comply with all zoning conditions and local ordinances applicable to tree removal. Any Owner shall obtain approval in accordance with Article 6 hereof for the removal of any tree that has a diameter greater than three inches (3"); provided, however, no approval shall be required to remove any tree that is diseased, dead or fallen.

7.10 Drainage. Catch basins, retention ponds, detention ponds, drainage easement areas and related drainage facilities are for the purpose of controlling the natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner may obstruct or alter the drainage flows after the location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article 6 hereof.

7.11 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or other planting or thing shall be placed or permitted to remain where, in the opinion of the Board of Directors, it would create an unsafe condition.

7.12 Garbage Cans, Woodpiles, Etc. All garbage cans, recycling bins, woodpiles, filters and related equipment, and other similar items shall, to the extent reasonably practicable, be kept in the garage or located or screened so as to be concealed from view from neighboring streets and property. All rubbish, trash, garbage, recycling materials and yard waste shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, construction waste, yard waste, or other organic or non-organic waste matter of any kind may not be burned within the Community. No garbage, trash, yard waste or other debris shall be placed on the Common Property, temporarily or otherwise. All Owners and Occupants shall comply with any applicable Gwinnett County, Georgia ordinances and regulations regarding collection of garbage, recycling materials and yard waste; and garbage, recycling and yard waste collection shall also be subject to such reasonable rules and regulations as the Board of Directors may adopt from time to time, including, without limitation, rules regarding the time period in which trash receptacles and recycling receptacles may be placed at the curb for pick-up.

7.13 Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval in accordance with the provisions of Article 6 hereof.

7.14 Fences and Walls. No fence or wall or fencing-type barrier or wall-type barrier of any kind shall be placed, erected, allowed or maintained upon any Lot without prior written

approval in accordance with the provisions of Article 6 hereof. Guidelines detailing acceptable fence and/or wall styles or specifications may be issued pursuant to Article 6, but in no event may a chain link, hog wire or barbed wire fence be approved; provided, however, the Association may erect any type of fence or wall on the Common Property or elsewhere within the Community as it may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for the health and safety of Owners and Occupants.

7.15 Utility Lines. Except as may be permitted under and pursuant to Article 6 hereof, no overhead utility lines, including lines for cable television, shall be installed within the Community.

7.16 Heating and Air-Conditioning Lots. No window heating and/or air conditioning units may be installed in a dwelling on a Lot.

7.17 Lighting. Exterior lighting on any Lot visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Lot; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) reasonable seasonal decorative lights displayed during the usual and common season(s), as the same may be determined from time to time by the Board of Directors; or (e) other lighting approved under and pursuant to Article 6 hereof or otherwise consistent with the Design Guidelines.

7.18 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Board of Directors and unless approved in accordance with the provisions of Article 6 hereof.

7.19 Artificial Vegetation, Gardens, Play Equipment, Exterior Sculpture, Water Features and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals and trampolines), exterior sculpture, fountains or water features may be erected on any Lot, without the prior written approval in accordance with the provisions of Article 6 hereof or as may otherwise be authorized by the Design Guidelines; provided, however, grass, ornamental plants and shrubbery (and only the foregoing) may be planted in the front or side yard of a Lot.

7.20 Mailboxes and Posts. All mailboxes and mailbox posts shall be of the same type and color existing on a Lot as of the date this Declaration is recorded in the Gwinnett County, Georgia land records and any modification to or change in mailboxes or mailbox posts shall require the prior written approval of the Board pursuant to Article 6 hereof.

7.21 Clotheslines. No exterior clotheslines of any type or similar items shall be permitted upon any Lot, nor shall any clothing, rugs or other items be hung on any railing, fence hedge or wall outside of any Lot.

7.22 Entry Features. Owners shall not alter, remove or add improvements to any entry features or streetscapes serving the Community constructed on any Lot, or any part of any easement area associated therewith, without prior approval in accordance with the provisions of Article 6 hereof.

7.23 Outbuildings and Similar Structures. No structure, including, without limitation, any trailer, tent, shack, carport, garage, barn or other outbuilding, shall be erected or allowed to remain on any Lot without prior written approval in accordance with the provisions of Article 6 hereof; and no trailer, camper, shack, tent, carport, garage, barn or other outbuilding or structure may be used as a residence, either temporarily or permanently.

7.24 Window Treatments. All windows shall have window treatments and any portion thereof visible from outside the Lot shall be white or off-white in color, unless otherwise approved in accordance with Article 6 hereof or otherwise consistent with applicable Design Guidelines, if any. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose. Bed sheets, blankets, towels, black plastic, paper and similar type items shall not be used as window treatments.

7.25 Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Lot without prior written approval pursuant to Article 6 and in no event shall any above-ground swimming pool be permitted; provided, however, portable wading pools designed for use by small children in accordance with the Design Guidelines shall be permitted on a Lot so long as the same is stored out of view from the streets and neighboring property when not in use.

7.26 Flags. No flags may be displayed on any Lot without prior written approval in accordance with the provisions of Article 6 hereof or otherwise in accordance with the Design Guidelines; provided, however no such approval shall be required to display the flag of the United States of America and the current flag of the State of Georgia on a Lot in accordance with the provisions of the U.S. Flag Code (36 US Code 10) and usual and customary practice. The Board of Directors may promulgate reasonable rules and regulations with respect to the display of flags in the Community, including, without limitation, regulating the size of flags that may be displayed and imposing reasonable time, place and manner restrictions pertaining to the display of the United States flag; provided, however, the Association shall not enact any rule or regulation which has the effect of prohibiting any Owner from displaying the flag of the United States of America on a Lot in the Community in contravention of the Freedom to Display the American Flag Act of 2005.

7.27 Leasing. In order to protect the equity of the individual members, to carry out the purpose for which the Association was formed by preserving the character of the Community as a homogenous residential community of predominantly Owner-occupied homes and by preventing the Community from assuming the character of a renter-occupied neighborhood, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially owner-occupied, leasing of Lots shall be governed by the restrictions imposed by this Section.



No Owner may lease his or her Lot unless: (a) the Lot is a Grandfathered Lot, as defined herein; or (b) the Owner has received a hardship leasing permit, in writing, from the Board of Directors, all as may be more specifically set forth below.

A hardship leasing permit will allow an Owner to lease his or her Lot in accordance with the terms and conditions set forth in this Section and in accordance with the rules and regulations of the Association and the covenants and conditions set forth in the Declaration. Hardship leasing permits shall only be valid as to a specific Owner and Lot and shall not be transferrable between Lots or subsequent Owners.

(a) Definitions.

(i) Effective Date means the date this Amendment is recorded in the Gwinnett County, Georgia land records.

(ii) Grandfathered Lot means any Lot being leased as of the Effective Date. Grandfathered Lots may continue to be leased until title to said Lot is conveyed to any Person or entity other than the Person or entity holding record title as of the Effective Date, provided the tenant complies with all regulations pertaining to the use of the Lot set forth in the Declaration and any amendments thereto, the Bylaws and any rules and regulations of the Association. All Owners of Grandfathered Lots shall file a copy of the lease agreement in effect with the Board within thirty (30) days of the Effective Date.

(iii) Leasing means regular, exclusive occupancy of a Lot by any person(s) other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, rent, gratuity or emolument. By way of explanation, and not limitation, the following shall not constitute leasing: (A) occupancy by a roommate of an Owner Occupant; (B) occupancy by a member of the Owner's family; or (C) occupancy by one or more wards if the Lot is owned by their legal guardian.

(b) Hardship Leasing Permits. If an Owner believes he or she must lease his or her Lot to avoid an undue hardship, the Owner shall submit a written request to the Board of Directors for a hardship leasing permit setting forth the circumstances necessitating the issuance of a hardship leasing permit and provide the Board with a copy of the proposed lease and such other information as the Board of Directors may reasonably require. A hardship hereunder may include, but not be limited to, the following situations: (i) an Owner dies and the Lot is being administered by his or her estate; (ii) an Owner must relocate outside metropolitan Atlanta and cannot, within six (6) months from the date that the Lot was placed on the market, sell the Lot except at a price below the current appraised market value, after making reasonable efforts to do so; or (iii) an Owner takes a leave of absence or temporarily relocates out of the metropolitan Atlanta area and intends to return to reside in the Lot within one year.

The Board may issue or deny requests for hardship leasing permits in its sole discretion after considering the following factors, which include, but are not limited to: (i) the nature, degree and likely duration of the hardship; (ii) the harm, if any, which will result to the Community if the hardship leasing permit is approved; (iii) the number of hardship leasing permits which have been issued to other Owners; (iv) the Owner's role in causing the hardship or ability to cure the hardship; and (v) whether previous hardship leasing permits have been issued to the Owner.

Leasing in the case of undue hardship shall be permitted only upon the Board's issuance of a hardship leasing permit. Hardship leasing permits shall be valid for a term not to exceed one (1) year. Owners may reapply for additional hardship leasing permits at the expiration of a hardship leasing permit in accordance with the procedures set forth herein.

Hardship leasing permits are automatically revoked upon: (a) the sale or transfer of a Lot to a third party (excluding sales or transfers to an Owner's spouse); (b) the failure of an Owner to lease his or her Lot within ninety (90) consecutive days at any time after the issuance of such hardship permit; or (c) the occupancy of the Lot by the Owner.

(c) Leasing Provisions. Leasing authorized under this Section shall be governed by the following provisions:

(i) General. Lots may be leased only in their entirety; no fraction or portion may be leased without the Board of Directors prior written approval. All leases shall be in writing in a form approved by the Board of Directors prior to the effective date of the lease. There shall be no subleasing or assignment of leases unless approved in writing by the Board of Directors. All leases must be for an initial term of at least one (1) year, except with written approval by the Board of Directors, which shall not be unreasonably withheld in cases of undue hardship. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations and the lease form shall provide that the Owner has made available to the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee.

(ii) Notice. Within seven (7) days of executing a lease agreement, the Owner shall provide the Board of Directors with the following information: (A) a copy of the fully executed lease agreement; (B) the name, phone number and e-mail address of the lessee; (C) the Owner's address other than at the Lot; and (D) such other information as the Board of Directors may reasonably require.

(iii) Liability for Assessments, Use of Common Property, and Compliance with Declaration, Bylaws, and Rules and Regulations. If a Lot is leased or occupied in violation of this Section, then the Board of Directors shall be authorized, in addition to all other available remedies, to terminate the lease and occupancy, and to suspend all voting rights and the right to use and enjoy the Common Property of the Owner and any unauthorized tenants(s) or Occupant(s).

Each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(A) Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee shall abide and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure such compliance. Owner agrees to cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto and is responsible for all violations caused by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto.

In the event that the lessee or a person living with the lessee violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the provisions contained herein. If the fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot.

Any violation of the Declaration, Bylaws, or rules and regulations and architectural guidelines adopted pursuant thereto by the lessee, any Occupant, or any guest of the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from violations of the Declaration, Bylaws or rules and regulations of the Association adopted thereunder, including the power and authority to terminate the lease without liability upon such violation(s) and to evict the lessee and/or the Occupant(s) as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof, it being hereby agreed that in such instance the Association shall have standing to terminate the lease and initiate dispossessory proceedings against the lessee and/or the Occupant(s). In the event the Association proceeds to evict the lessee and/or the Occupant(s) of a Lot, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Lot and any hardship leasing permit granted herein shall automatically be revoked.

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

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

(d) Mortgagee Exemption. This Section shall not apply to any leasing transaction entered into by the Association or an institutional holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such first Mortgage.

## Article 8 Mortgagee Provisions

8.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number), (therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such eligible holder;

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

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

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

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

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

8.4 Applicability of Article 8. Nothing in this Article 8 shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws or Georgia law for any of the acts set out in this Article.

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

## Article 9 Insurance and Casualty Losses

9.1 Insurance on Common Property. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Property or required to be maintained by the Association under Section 5.1 hereof; provided, however, nothing contained herein shall obligate the Association to obtain insurance for any portion of a Lot or a dwelling located on a Lot which insurance shall be the responsibility of the Owner. This insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

The Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the

face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective parties which may be benefited by such insurance, as their interests may appear. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company authorized to do business in Georgia.
- (b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (c) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if these are reasonably available, and all insurance policies shall be reviewed annually by one or more qualified Persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.
- (d) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
  - (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents and guests;
  - (ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
  - (iii) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any one or more individual Owners;
  - (iv) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any defect or the conduct of any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;
  - (v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
  - (vi) that no policy may be canceled, subjected to nonrenewal, or substantially modified without at least ten (10) days' prior written notice to the Association.

In addition to other insurance coverage required by this Section, the Board shall obtain workers compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law, and, if available at reasonable cost, as determined in the sole discretion of the Board, a fidelity bond or employees dishonesty coverage covering directors, officers, employees and other Persons handling or responsible for the Association's funds. The amount of fidelity or employees dishonesty coverage, if obtained, shall be determined in the directors' best business judgment. Such coverage, if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least ten (10) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage and flood insurance, if and to the extent necessary to satisfy the requirements of The Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

9.2 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and any and all other insurable improvements thereon, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry all-risk casualty insurance on the Lot and all structures constructed thereon, and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policies required hereunder shall be in effect at all times.

9.3 Damage and Destruction -- Insured by Association. Immediately after damage or destruction by fire or other casualty to any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, a proposal not to repair or reconstruct such property is approved by at least two-thirds (2/3) of the Total Association Vote. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members of the Association, levy a special assessment against the Owner of each Lot. Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or

reconstructed, such excess funds shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard and this Declaration.

9.4 Damage and Destruction -- Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired or reconstructed by the Owner thereof in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 6 of this Declaration. Said repair or reconstruction shall be completed within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable period of time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction and thereafter shall maintain said Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard and this Declaration. The Owner shall pay all costs which are not covered by insurance proceeds.

## Article 10 Easements

10.1 General. Each Lot shall be subject to those easements, if any, shown or set forth on the recorded subdivision plat(s) for the Community, as amended from time to time, those easements established in the Original Declaration, as well as the easements now or hereafter established by the Association in this Declaration or by any other documents recorded in the Office of Clerk of Superior Court of Gwinnett County, Georgia.

10.2 Easements for Use and Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following provisions:

(a) the right of the Association to suspend the right of an Owner to use the Common Property, including, without limitation, the Community recreational facilities, for any period during which any past due assessment against any Lot of the Owner remains unpaid, and for a reasonable period of time for an infraction of the Declaration, Bylaws, rules and regulations and Design Guidelines;

(b) the right of the Association to charge reasonable admission and other fees for the use of the Community recreational facilities, to limit the number of Persons who may use the Community recreational facilities and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by authorized users and their guests and invitees; provided, nothing in this Declaration shall be construed as permitting or granting owners who do not live in the Community the right to use and enjoy the Community recreational facilities;



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

(d) the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Property;

(e) the right of the Association to dedicate, transfer or convey all or any portion of the Common Property, other than as provided in Subsection (d) above, upon the approval of the Owners of at least two thirds (2/3) of the Lots;

(f) all other rights of the Association, Owners and Occupants or other Persons set forth in this Declaration, any Supplementary Declaration or in any deed conveying Common Property to the Association;

(g) all encumbrances and other matters shown by the public records affecting title to the Common Property; and

(h) the right of the Association, acting through the Board, to grant non members the right to use and enjoy the Community recreational facilities as provided in Section 11.18 hereof.

10.3 Easement for Encroachment and Overhang. As provided in the Original Declaration, there shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to the willful conduct on the part of an Owner, tenant, or the Association.

10.4 Delegation of Use. Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon, including, without limitation, the Community recreational facilities, to the members of his or her family and tenants who occupy the Lot and such Owner shall be deemed to have made a delegation of all such rights to the Occupants of any leased Lot.

10.5 Easement for Utilities. As established in the Original Declaration, there has been established in favor of the Association a blanket easements upon, across, above and under all property within the Community for access to, ingress to, egress from, installation of, repairing, replacing and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity utilities, as well as storm drainage and any other service, such as, but not limited to, a master television antenna system, cable television system, or security system, which the Association might decide to have installed to serve the Community. It shall be expressly permissible for the Association, or its designees to install, repair, replace and maintain, or to authorize the installation, repair, replacement and maintenance of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

10.6 Easements for Association Maintenance. As established in the Original Declaration, there is hereby expressly granted to the Association a perpetual easement across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article 5. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

10.7 Easements for Maintenance and Repair. There shall be reciprocal appurtenant easements between adjacent Lots for the purpose of maintaining or repairing the improvements, including, without limitation, landscaping, located on each Lot, which easement shall extend to a distance of not more than five (5) feet as measured from any point on the common boundary between the Lots and along a line perpendicular to such boundary at such point. The easement shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance or repair. The Lot Owner exercising this easement right shall be liable for the prompt repair of any damage to the Lot over which this easement is exercised which is caused by the maintenance or repair work. The damaged portions of such Lot shall be restored to substantially the same condition as existed prior to the damage.

10.8 Easements for Entry. In addition to the right of the Board to exercise self-help as provided herein, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security and safety reasons, which right may be exercised by the manager and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the

right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

10.9 Easements for Entry Features and Street Signs. As established in the Original Declaration, there is hereby reserved to the Association and its designees an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of entry features and street signs for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and the right to grade the land under and around the entry features.

## Article 11 General Provisions

11.1 Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, the Design Guidelines and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plat(s) for the Community and in the deed to such Owner's Lot, if any. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments and the Board may count each day a violation continues after notice thereof as a separate violation. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, including, without limitation, reasonable attorney's fees actually incurred, maintainable by the Association or an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or Design Guidelines and to assess the cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

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

11.3 Self-Help. In addition to any other remedies provided for herein, the Association, acting through the Board of Directors or their respective duly authorized agents shall have the power to enter upon any Lot or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, the use restrictions or the Design Guidelines. Unless an emergency situation exists,

the violating Owner shall be given ten (10) days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required by law and by this Declaration. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.

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

#### 11.5 Amendment.

(a) By the Board. The Association, acting through the Board of Directors and without any further consent or action on the part of the members, may amend this Declaration for the following purposes: (i) those specific purposes permitted under Georgia law, including, without limitation, if such amendment is necessary to bring any provision hereof into compliance with the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq*; (ii) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (iii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iv) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (v) if such amendment is necessary to enable any governmental agency or private insurance company, including without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, no such amendment set forth in this subsection (a) shall adversely affect the title to any Lot unless the Owner of such Lot consents thereto in writing.

(b) By the Association. In addition, this Declaration may be amended upon the affirmative vote or written consent, or any combination of affirmative vote or written consent, of members of the Association holding at least two-thirds (2/3) of the Total Association Vote. The consent of the requisite number of Owners to any amendment shall be evidenced by the

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

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

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

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

11.9 Preparer. This Declaration was prepared by Rachel E. Conrad, Dorough & Dorough, LLC, Attorneys at Law, 160 Clairemont Avenue, Suite 650, Decatur, Georgia 30030.

11.10 Notices. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Lot or to the Association at the address of its registered agent on file with the Georgia Secretary of State. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Owners shall keep the Association advised of their current address and phone numbers where they can be reached. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by Federal Express or other reputable courier service. The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

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

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

11.13 Notice of Sale or Acquisition. Prior to the sale of a Lot, the Owner shall provide the Association with written notice of the name of the purchaser and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall provide the Association with written notice of the name and mailing address of the Owner and such other information as the Board may reasonably require. All Owners shall keep the Association apprised of any change in name, address or telephone number.

11.14 Agreements. All agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

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

11.16 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least two-thirds (2/3) of the Total Association Vote. This Section shall not apply 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 herein, (c) proceedings involving challenges to *ad valorem* taxation, (d) counterclaims 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 goods or services to which the Association is a party. This Section shall not be amended unless such amendment is made as provided herein or is approved by the percentage votes necessary to institute proceedings as provided above.

11.17 Security. ALL OWNERS, OCCUPANTS, GUESTS, LICENSEES, AND INVITEES, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, AND THE ARCHITECTURAL CONTROL COMMITTEE, IF ANY, DO NOT REPRESENT OR WARRANT THAT ANY SAFETY OR SECURITY MEASURES WILL BE IMPLEMENTED IN THE COMMUNITY OR, IF IMPLEMENTED, THAT SUCH SAFETY OR SECURITY MEASURES MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR THAT ANY SUCH SAFETY OR SECURITY MEASURES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THEY ARE DESIGNED. EACH OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE ARCHITECTURAL CONTROL COMMITTEE, IF ANY, ARE NOT INSURERS OR PROVIDERS OF SAFETY OR SECURITY AND SHALL HAVE NO DUTY TO PROVIDE ANY SAFETY OR SECURITY ON THE COMMON PROPERTY OF THE COMMUNITY OR OTHERWISE; AND THAT EACH OWNER, OCCUPANT, GUEST, LICENSEE, AND INVITEE ASSUMES ALL RISKS OF PERSONAL INJURY AND PROPERTY DAMAGE AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, THE BOARD OF DIRECTORS, AND THE ARCHITECTURAL CONTROL COMMITTEE, IF ANY, HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SAFETY OR SECURITY MEASURES IMPLEMENTED OR APPROVED.

11.18 Use of Recreational Facilities by Non-Members. The Association, acting through the Board, shall have the right to grant to Persons who are not members of the Association, but who reside in the Berkeley Commons community, the right to use the Community recreational facilities pursuant to that certain Declaration of Use Rights and Easement to the Recreational Facilities of the Berkeley Walk Community for the Benefit of Owners in the Berkeley Commons Community, recorded October 2, 1997, at Deed Book 14821, Page 119, *et seq.*, Gwinnett County, Georgia land records ("Recreational Facilities Declaration"), a copy of which is attached as Exhibit "D" hereto and incorporated by reference herein. The Association shall have the right to charge an annual fee to owners of lots in Berkeley Commons for the use and enjoyment of the Community recreational facilities in accordance with the Recreational Facilities Declaration and the Association shall have the right to exercise the remedies set forth in the Recreational Facilities Declaration for nonpayment of the same, such that once a lot owner in Berkeley Commons fails to remit payment of the annual usage fee to the Association, that owner of the lot and subsequent owners of such lot no longer have the right to use and enjoy the Community recreational facilities as outlined in the Recreational Facilities Declaration. The annual fee to be paid by owners in Berkeley Commons under the Recreational Facilities Declaration may only be

increased at the same rate as Lot Owners in the Berkeley Walk Community. No other property owners other than owners of property within Berkeley Commons shall be permitted to use and enjoy the Community recreational facilities.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the Association hereby executes this instrument under seal,  
this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

ASSOCIATION: **BERKELEY WALK COMMUNITY  
ASSOCIATION, INC.**, a Georgia nonprofit  
corporation

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
President

Attest: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Secretary

Signed, sealed and delivered  
in the presence of

[AFFIX CORPORATE SEAL]

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

[AFFIX NOTARY SEAL]

EXHIBIT "A"  
Sworn Statement of Secretary of  
Berkeley Walk Community Association, Inc.

STATE OF GEORGIA

COUNTY OF GWINNETT

Re: Berkeley Walk Community Association, Inc.

Personally appeared before me, the undersigned deponent who, being duly sworn, deposed and said on oath that:

1. Deponent is the Secretary of Berkeley Walk Community Association, Inc.
2. Deponent is duly qualified and authorized to make this Affidavit and knows the facts contained herein are of his own personal knowledge.
3. The foregoing Amended and Restated Declaration of Protective Covenants for Berkeley Walk was approved by Owners of at least two-thirds of the Lots as provided in Article XII, Section 4 of the Original Declaration and otherwise in accordance with the Act, which approval was lawfully obtained.
4. The Amended and Restated Bylaws of Berkeley Walk Community Association, Inc. were approved by Owners of at least two-thirds of the Lots as provided in Article VI, Section 4 of the Original Bylaws and otherwise in accordance with the Act, which approval was lawfully obtained.
5. Any notices required by the Original Declaration, Original Bylaws, the Articles of Incorporation and Georgia law were given.
6. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-3-226.

This the \_\_\_\_ day of \_\_\_\_\_, 201\_.

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_ day of \_\_\_\_\_, 201\_:

\_\_\_\_\_  
Notary Public  
[AFFIX NOTARY SEAL]

EXHIBIT "B"  
Property Description

ALL THAT TRACT OR PARCEL OF LAND LYING and being in Land Lots 269 and 288 of the 6th District, City of Berkeley Lake, Gwinnett County, Georgia, containing approximately 26.252 acres, including, without limitation, Lots 1 through 23 of Block "A", Lots 72 through 82 of Block "A" and Amenity Area (containing approximately 2.405 acres), as more particularly shown on that certain **Final Plat for Berkeley Walk – Unit One**, prepared by Precision Planning, Inc., containing the seal of Jon G. Stubblefield, G.R.L.S. No. 2599, dated March 14, 2004, last revised April 15, 1994, recorded May 3, 1994, in Plat Book 62, Page 92, Gwinnett County, Georgia land records; as revised and recorded on September 12, 1994 in Plat Book 63, Page 288, aforesaid records; and as revised and re-recorded on November 14, 1995 in Plat Book 68, Page 165, aforesaid records, reference to said plat of survey and the record thereof being hereby made for a more complete description.

TOGETHER WITH:

ALL THAT TRACT OR PARCEL OF LAND LYING and being in Land Lots 269 and 288 of the 6th District, City of Berkeley Lake, Gwinnett County, Georgia, containing approximately 18.285 acres, including, without limitation, Lots 24 through 44 of Block "A" and Lots 70 and 71 of Block "A", as more particularly shown on that certain **Final Plat for Berkeley Walk – Unit Two Phase A**, prepared by Precision Planning, Inc., containing the seal of Anthony Mark Veal, G.R.L.S. No. 2651, dated January 5, 1995, last revised January 13, 1995, recorded January 18, 1995, in Plat Book 65, Page 65, Gwinnett County, Georgia land records; as revised and re-recorded on August 9, 1996 in Plat Book 71, Page 59, aforesaid records, reference to said plat of survey and the record thereof being hereby made for a more complete description.

TOGETHER WITH:

ALL THAT TRACT OR PARCEL OF LAND LYING and being in Land Lots 269 and 288 of the 6th District, City of Berkeley Lake, Gwinnett County, Georgia, containing approximately 26.572 acres, including, without limitation, Lots 45 through 69 of Block "A", as more particularly shown on that certain **Final Plat for Berkeley Walk – Unit Two Phase B**, prepared by Precision Planning, Inc., containing the seal of Anthony Mark Veal, G.R.L.S. No. 2651, dated June 2, 1995, last revised June 15, 1995, recorded July 17, 1995, in Plat Book 67, Page 77, Gwinnett County, Georgia land records; as revised and re-recorded August 9, 1996 in Plat Book 71, Page 60, aforesaid records, reference to said plat of survey and the record thereof being hereby made for a more complete description.

Exhibit "C"  
Amended and Restated Bylaws of Berkeley Walk Community Association, Inc.

[to be inserted prior to recording]

Exhibit "D"  
Recreational Facilities Declaration

[to be attached prior to recording]