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Please Record and Return To:

J. Tom Minor, IV  
Minor, Bell & Neal, P.C.  
P.O. Box 2586  
Dalton, GA 30722-2586

**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR THE RESERVE AT BATTLEFIELD CROSSING,  
A PLANNED RESIDENTIAL COMMUNITY SUBDIVISION**

Georgia, Catoosa County

**THIS DECLARATION**, made on the date hereinafter set by Catoosa Development, LLC, a Georgia limited liability company (hereinafter referred to as the "Declarant").

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain land more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof; and

**WHEREAS**, the Declarant wishes to establish and assure a uniform plan for the development of the Property and to enhance and protect the economic and aesthetic value and desirability of the Property and the health, safety and welfare of the residents of the Property;

**NOW, THEREFORE**, Declarant hereby declares that the real property described in said attached Exhibit "A" is hereby subjected to this Declaration and is and shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the protective covenants, restrictions, easements, assessments and liens hereinafter set forth; and Declarant further hereby declares that such other real property as may later be subjected to this Declaration shall, from and after the filing of record of a supplementary declaration as described herein, be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the provisions of this Declaration which are specified in such supplementary declaration. Every grantee of any interest in the above described real property which is now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance of such interest, whether or not it shall be so expressed in any such deed or other conveyance, and whether or not it shall be signed by such person, and whether or not such person shall otherwise

consent in writing, shall take subject to this Declaration and to the terms and conditions hereof, and shall be deemed to have assented to said terms and conditions.

## ARTICLE 1 NAME.

*Section 1.01 Name.* The name of the Property is The Reserve at Battlefield Crossing, which property is a residential property owners' development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Sections 44-3-220, et seq., as may be amended.

## ARTICLE 2 DEFINITIONS.

*Section 2.01 Definitions.* Generally, terms used in the Association Legal Instruments shall have their normal, generally accepted meanings or the meanings given in the Act or the Georgia Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in the Association Legal Instruments shall be defined as follows:

- (a) "Act" means the Georgia Property Owners' Association Act, O.C.G.A. Sections 44-3-220, et seq., as may be amended.
- (b) "Architectural Control Committee" or "ACC" means the committee established to exercise the architectural review powers set forth in Article 10 hereof.
- (c) "Area of Common Responsibility" means the Common Property, together with any areas which become the Association's responsibility under this Declaration or by contract or agreement with any other Person. The office of any property manager employed by or contracting with the Association, if located on the Property, or any public rights of way within or adjacent to the Property, may be part of the Area of Common Responsibility.
- (d) "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of \_\_\_\_\_, Inc., filed with the Secretary of State of the State of Georgia.
- (e) "Association" means \_\_\_\_\_, Inc., a Georgia nonprofit corporation, its successors or assigns.
- (f) "Association Legal Instruments" means this Declaration, the By-Laws, the Articles of Incorporation, the restrictions or rules, and the plats of survey and plans of the Property, all including any Exhibits thereto, and all as may be supplemented or amended.
- (g) "Board" or "Board of Directors" means the elected body responsible for management and operation of the Association.
- (h) "By-Laws" mean the By-Laws of \_\_\_\_\_, Inc.
- (i) "Common Area" or "Common Property" means any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.
- (j) "Common Expenses" mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Lots.
- (k) "Community" means the residential development developed on the Property.
- (l) "Community-Wide Standard" means the standard of conduct, maintenance, or other activity generally prevailing in the Property. Such standard may be more specifically determined by the Board and the ACC.
- (m) "Declarant" shall mean Catoosa Development, LLC, a Georgia limited liability company, its successors and assigns; provided however that no successor or assignee of Declarant shall have any rights or obligations of the Declarant hereunder unless such rights and obligations are specifically set forth in an instrument of succession or

assignment designating a party as the Declarant hereunder or which pass by operation of law.

(n) "Declaration" means this Declaration of Covenants, Conditions, and Restrictions for The Reserve at Battlefield Crossing Subdivision.

(o) "Department of Housing and Urban Development" or "HUD" shall mean and refer to that governmental agency of the United States of America so entitled and any agency or authority of the United States of America which succeeds the Department of Housing and Urban Development.

(p) "Director" means those persons elected as the body responsible for management and operation of the Association.

(q) "Dwelling Unit" shall mean any portion of the Property as improved, intended for any type of independent ownership for use and occupancy as a residence by one household and shall, unless otherwise specified, include within its meaning (in way of illustration, but not limitation) patio, single family detached, or zero lot line homes, as may be used and defined as herein provided or as provided in subsequent Declarations covering all or part of the Property. If a Dwelling Unit is attached by party wall(s) to one or more other Dwelling Unit, the boundary between Dwelling Unit shall be a line running along the center of the party wall(s) separating the Dwelling Unit. The ownership of each Dwelling Unit shall include the exclusive right to use and possession of any and all portions of the heating and air conditions units which are appurtenant to and serve each Dwelling Unit (including, but not limited to, compressors, conduits, wires and pipes) and any porch deck, patio, steps, wall, roof, foundation, sunroom or any similar appurtenance as may be attached to a Dwelling Unit when such Dwelling Unit is initially constructed. The ownership of each Dwelling Unit shall include, and there shall automatically pass with the title to each Dwelling Unit as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interest of an Owner in the Common Property.

(r) "Effective Date" means the date that this Declaration is recorded in the office of the Clerk of the Superior Court of the county wherein the Property lies.

(s) "Eligible Mortgage Holder" means a holder of a first mortgage secured by a Lot who has requested notice of certain items as set forth herein.

(t) "Exempt Property" shall mean and refer to all land and structures and Common Areas owned by the Association for so long as the Association shall be the owner thereof.

(u) "Federal Communication Commission" or "FCC" shall mean and refer to that governmental agency of the United States of America so entitled and any agency or regulatory authority of the United States of America which succeeds the Federal Communication Commission.

(v) "Federal Housing Administration" or "FHA" shall mean and refer to that governmental agency of the United States of America so entitled and any agency or regulatory authority of the United States of America which succeeds the Federal Housing Administration.

(w) "Institutional Mortgagee" or "Institutional Holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), and all similar corporations and agencies or departments of the United States Government or of any state or municipal government.

(x) "Leasing" shall mean the regular, exclusive occupancy of a Lot by any person other than the Owner, for which the Owner receives any consideration or benefit including, but not limited to, a fee, service, gratuity, or emolument.

- (y) "Lot" means a portion of the Property intended for ownership and use as permitted in this Declaration, and such additions as may be hereto brought with the jurisdiction, as shown on the plats for the Property, or amendments or supplements thereto.
- (z) "Majority" means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.
- (aa) "Member" means those persons entitled to membership as provided in this Declaration.
- (bb) "Mortgage" means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.
- (cc) "Mortgagee" or "Mortgage Holder" means the holder of any Mortgage.
- (dd) "Occupant" means any Person occupying all or any portion of a dwelling or other property located within the Property for any period of time, regardless of whether such Person is a tenant or the Owner of such property.
- (ee) "Officer" means an individual who is elected by the Board of Directors to serve as President, Vice President, Secretary, or Treasurer, or such other subordinate officers as the Board may determine necessary.
- (ff) "Owner" means the record titleholder of a Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- (gg) "Participating Builder" shall mean and refer to a person or entity described in writing by the Declarant as a participating builder.
- (hh) "Person" means any individual, corporation, firm, association, partnership, trust, estate, or other legal entity.
- (ii) "Property" means that real estate which is submitted to the Act and the provisions of this Declaration, as described in Exhibit "A" attached hereto and incorporated herein by reference.
- (jj) "Veterans Administration" or "VA" shall mean and refer to that governmental agency of the United States of America so entitled and any agency or authority of the United States of America which succeeds the Veterans Administration.

### **ARTICLE 3 LOCATION, PROPERTY DESCRIPTION, AND PLATS.**

*Section 3.01 Location.* The Property subject to this Declaration and the Act is described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference.

### **ARTICLE 4 ASSOCIATION MEMBERSHIP, VOTING RIGHTS, BOARD OF DIRECTORS, AND MEETINGS.**

*Section 4.01 Membership in the Association.* The Association shall have the following classes of membership:

- (a) Class A Members shall be all Owners with the exception of the Declarant and with the exception of the Participating Builders. A Person shall automatically become a Class A Member upon his becoming an Owner and shall remain a Class A Member for so long as he is an Owner;
- (b) The Class B Member shall be the Declarant; and
- (c) The Class C Members shall be any Owners that are Participating Builders.

*Section 4.02 Voting Rights of Members.* Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

(a) Each Class A and C Member shall be entitled to one (1) vote on each matter submitted to the members for each Lot owned by such Class A or C Member which is not Exempt Property. Any Class A or C Member who is in violation of this Declaration, as determined by the Board of Directors in accordance with the provisions hereof and regulations established hereunder, shall not be entitled to vote during any period in which such violation continues. If a Lot shall be owned by more than one Owner, such Owners shall be deemed to constitute a single Member as to such Lot and shall collectively be entitled to a single vote for such Lot (or for each Dwelling Unit located on such Lot) as to each matter properly submitted to the Members.

(b) The Class B Member shall be entitled initially to three (3) votes for each Lot owned. The Class B membership shall terminate and become converted to Class A membership upon the occurrence of the earlier of the following:

(i) When the total outstanding Class A votes equal or exceed the total Class B votes;

(ii) Ten (10) years from the date of recording of this Declaration; or

(iii) Such earlier time as Declarant in its sole discretion, determines.

(c) Notwithstanding the foregoing, in the event the Declarant wishes to annex any additional properties pursuant to Section 17.08, the Class B membership shall be revised with respect to all Lots owned by the Declarant on the annexed property and the Property, and the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(i) When the total votes outstanding in the Class A memberships in the Property and the annexed property equal the total votes outstanding in the Class B membership in such annexed property; or

(ii) Seven (7) years from the date of recordation of any Supplemental Declaration for the last portion of such annexed property.

(d) Any vote of the Members shall be taken without regard to class of membership except in those instances requiring the affirmative vote or approval of each class of membership in accordance with the Association Legal Instruments.

*Section 4.03 Meetings.* Subject to the other provisions of this Article, all matters concerning meetings of Members of the Association, including the time within which and the manner in which notice of any of said meetings shall be given to said Members, and the quorum required for the transaction of business at any of said meetings shall be as specified in the By Laws of the Association, as amended from time to time and by law.

## **ARTICLE 5 ALLOCATION OF LIABILITY FOR COMMON EXPENSES.**

*Section 5.01 Liability.* Except as otherwise provided herein, each Lot is hereby allocated equal liability for Common Expenses.

(a) Except as provided below, or elsewhere in the Act or the Association Legal Instruments, the amount of all Common Expenses shall be assessed against all the Lots.

(b) The Board of Directors shall have the power to assess specifically pursuant to this Article and to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Article shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.

*Section 4.02 Voting Rights of Members.* Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

(a) Each Class A and C Member shall be entitled to one (1) vote on each matter submitted to the members for each Lot owned by such Class A or C Member which is not Exempt Property. Any Class A or C Member who is in violation of this Declaration, as determined by the Board of Directors in accordance with the provisions hereof and regulations established hereunder, shall not be entitled to vote during any period in which such violation continues. If a Lot shall be owned by more than one Owner, such Owners shall be deemed to constitute a single Member as to such Lot and shall collectively be entitled to a single vote for such Lot (or for each Dwelling Unit located on such Lot) as to each matter properly submitted to the Members.

(b) The Class B Member shall be entitled initially to three (3) votes for each Lot owned. The Class B membership shall terminate and become converted to Class A membership upon the occurrence of the earlier of the following:

(i) When the total outstanding Class A votes equal or exceed the total Class B votes;

(ii) Ten (10) years from the date of recording of this Declaration; or

(iii) Such earlier time as Declarant in its sole discretion, determines.

(c) Notwithstanding the foregoing, in the event the Declarant wishes to annex any additional properties pursuant to Section 17.08, the Class B membership shall be revised with respect to all Lots owned by the Declarant on the annexed property and the Property, and the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(i) When the total votes outstanding in the Class A memberships in the Property and the annexed property equal the total votes outstanding in the Class B membership in such annexed property; or

(ii) Seven (7) years from the date of recordation of any Supplemental Declaration for the last portion of such annexed property.

(d) Any vote of the Members shall be taken without regard to class of membership except in those instances requiring the affirmative vote or approval of each class of membership in accordance with the Association Legal Instruments.

*Section 4.03 Meetings.* Subject to the other provisions of this Article, all matters concerning meetings of Members of the Association, including the time within which and the manner in which notice of any of said meetings shall be given to said Members, and the quorum required for the transaction of business at any of said meetings shall be as specified in the By Laws of the Association, as amended from time to time and by law.

## **ARTICLE 5 ALLOCATION OF LIABILITY FOR COMMON EXPENSES.**

*Section 5.01 Liability.* Except as otherwise provided herein, each Lot is hereby allocated equal liability for Common Expenses.

(a) Except as provided below, or elsewhere in the Act or the Association Legal Instruments, the amount of all Common Expenses shall be assessed against all the Lots.

(b) The Board of Directors shall have the power to assess specifically pursuant to this Article and to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Article shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.

(c) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots may be specially assessed against such Lot or Lots.

(d) For purposes of this subsection, nonuse shall constitute a benefit to less than all Lots or a significant disproportionate benefit among all Lots only when such nonuse results in an identifiable, calculable reduction in cost to the Association.

## **ARTICLE 6 ASSOCIATION RIGHTS AND RESTRICTIONS.**

*Section 6.01 The Association.* The Association, acting through its Board of Directors, shall have the right and authority, in addition to and not in limitation of all other rights it may have:

(a) To make and to enforce reasonable rules and regulations governing the use of the Property, including the Lots and the Common Property;

(b) To enforce use restrictions, other Association Legal Instruments provisions, and rules and regulations by imposing reasonable monetary fines, exercising self-help powers, and suspending use and voting privileges and services paid for as a Common Expense, as provided herein and in Section 44-3-223 of the Act. These powers, however, shall not limit any other legal means of enforcing the use restrictions or Association rules and regulations by either the Association or, in an appropriate case, by an aggrieved Owner;

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

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

(e) To deal with the Common Property in the event of damage or destruction as a result of casualty loss, condemnation, or eminent domain, in accordance with the provisions of this Declaration;

(f) To represent the Owners in dealing with governmental entities on matters related to the Common Property;

(g) To permanently or temporarily close access to any portion of the Common Property with, except in emergency situations, thirty (30) days prior notice to all Owners. However, except for seasonal closing of any pool(s), the Owners may re-open the closed Common Property by a majority vote of the total Association vote, cast at a duly called special or annual meeting;

(h) To enter Lots for maintenance, emergency, security, or safety purposes, or otherwise to discharge its powers or responsibilities hereunder, which rights may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot; and

(i) To acquire, lease, hold, and dispose of tangible and intangible personal property and real property.

## **ARTICLE 7 ASSESSMENTS.**

*Section 7.01 Purpose of Assessment.* The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein shall be used

for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots as may be authorized by the Board.

**Section 7.02** *Creation of the Lien and Personal Obligation For Assessments.* Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: annual assessments or charges; special assessments, to be established and collected as hereinafter provided; and specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines imposed hereunder. All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment became due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. No Owner may exempt himself or herself from liability or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties. The lien provided for herein shall have priority as provided in the Act.

**Section 7.03** *Delinquent Assessments.* All assessments and related charges not paid on or before the due date shall be delinquent, upon which occurrence the Owner shall be in default.

(a) If the annual assessment or any part thereof is not paid in full within ten (10) days of the due date, or such later date as may be provided by the Board, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner, and interest at the rate of ten (10%) percent per annum or such higher rate as permitted by the Act shall accrue from the due date.

(b) If part payment of assessments and related charges is made, the amount received shall be applied, in respective order, to costs and attorney's fees, late charges, interest, delinquent assessments, and current assessments.

(c) If assessments and other charges or any part thereof remain unpaid for more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the By-Laws, the Act and Georgia law and suspend the Owner's and Occupant's right to use the Common Property (provided, however, that the Board may not limit ingress or egress to or from the Lot).

**Section 7.04** *Exempt Property.* Each Lot now or hereafter made subject to this Declaration shall be exempt from the assessments, charges and liens created herein while owned by Declarant or while owned by a Participating Builder. All Common Property, including any Lot which may be designated for use as such by Declarant, shall be exempt from the assessments, charges, and liens created therein.

**Section 7.05** *Effect of Non Payment of Assessment and the Remedies of Association.* If an assessment is not paid on the date when due, as herein provided, then such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge and continuing lien on the Lot to which it relates, and shall bind such property in the hand of the then Owner, his heirs, legal representatives, successors and assigns. Each Owner, by acceptance of a deed or other conveyance to a Lot, vests in the Association or the Owner's agent the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien in any appropriate proceeding in law or in equity. The Association shall have the power to bid in the Lot at any



foreclosure sale and to acquire, hold, lease mortgage and convey the same. No Owner may be relieved from liability for the assessments provided for herein by non use of the Common Property or by abandonment of the Owner's Lot or otherwise.

**Section 7.06** *Computation of Operating Budget and Assessment.* At least thirty (30) days prior to the beginning of the Association's fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Property during the coming year. The Board shall cause the budget and notice of the assessments to be levied against each Lot for the following year to be delivered to each member prior to the Association's annual meeting. The budget and the assessment shall become effective unless disapproved at a duly called meeting by a vote of a majority of the total Association membership. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then, until a budget is determined as provided herein, the budget in effect for the current year shall continue for the succeeding year, and the Board may propose a new budget at any time during the year by causing the proposed budget and assessment to be delivered to the members at least thirty (30) days prior to the proposed effective date thereof. Unless a special meeting is requested by the members, as provided in the By-Laws for special meetings, the new budget and assessment shall take effect without a meeting of the members.

**Section 7.07** *Special Assessments.* In addition to the annual assessment provided for in this Article, the Board may at any time levy a special assessment against all Owners, notice of which shall be sent to all Owners; provided, however, prior to becoming effective, any special assessment which would cause the total of special assessments levied against any Lot in one calendar year to exceed two hundred (\$200.00) dollars (except as provided in Section 9.03 herein, as provided in the Act as may be amended regarding repair or reconstruction of casualty damage to or destruction of all or part of the Property) first shall be approved by the affirmative vote of at least two-thirds (2/3) of Owners present or represented by proxy at a special or annual meeting of the members, notice of which shall specify that purpose.

**Section 7.08** *Capital Budget and Contribution.* The Board shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in Section 7.05. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

**Section 7.09** *Statement of Account.* Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Lot. The Association shall respond in writing within five (5) days of receipt of the request for a statement; provided, however, that the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars or such higher amount as may be authorized under 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.

**Section 7.10** *Surplus Funds and Common Profits.* Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the Board's option, either be distributed equally to the Owners or credited to the next assessment chargeable to the Owners, or added to the Association's reserve account.

*Section 7.11 Initial Working Fund.* The Board of Directors shall collect a working capital contribution against the initial Owner of a Lot (other than Declarant or a Participating Builder) at the time of the closing of the Lot. Such contribution shall be equal to two (2) months of the annual general assessments and shall be utilized for commencing the business of the Association and providing the necessary working fund for it.

## ARTICLE 8 INSURANCE.

*Section 8.01 Common Property.* The Association's Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property. This insurance shall include fire and extended coverage, including coverage for vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

*Section 8.02 Liability Policy.* The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars.

*Section 8.03 General Insurance Provisions.* All such insurance coverage obtained by the Board shall be written in the name of the Association. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company licensed to do business in Georgia;
- (b) All policies on the Common Property shall be for the benefit of the Association and its members;
- (c) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary;
- (d) 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 Property is located; and
- (e) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
  - (i) A waiver of subrogation by the insurer as to any claims against the Board, the Association's 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) A provision that no policy may be canceled, invalidated, suspended or subjected to nonrenewal on account of any one or more individual Owners;
  - (iv) A provision that no policy may be canceled, invalidated, suspended, or subjected to nonrenewal 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 or substantially modified or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association.

**Section 8.04 Worker's Compensation.** In addition to the other insurance required by this Article, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds or dishonesty insurance. The amount of fidelity coverage or dishonesty insurance shall be determined in the directors' best business judgment, but if reasonably available, shall not be less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, that fidelity coverage herein required may be reduced based on financial controls which take one or more of the following forms:

(a) The Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association;

(b) The management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or

(c) Two Board members must sign any checks written on the reserve account. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association.

**Section 8.05 Individual Insurance.** Each Owner covenants and agrees with all other Owners and with the Association that such Owner shall carry blanket all-risk casualty insurance, if reasonably available, or if not reasonably available, fire and extended coverage, on his or her Lot and structures constructed thereon meeting the same requirements as set forth in subsections (a) and (c) of this Article for insurance on the Common Property. Each Owner further covenants and agrees that in the event of damage and destruction of structures on his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9 of this Declaration. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

## ARTICLE 9 REPAIR AND RECONSTRUCTION.

**Section 9.01 Repair and Reconstruction.** In the event of damage to or destruction of all or any part of the Common Property as a result of fire or other casualty, unless eighty (80%) percent of the Lot Owners vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure.

*Section 9.02 Cost Estimates.* Immediately after a fire or other casualty causing damage to the Common Property, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the Common Property to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

*Section 9.03 Source and Allocation of Proceeds.* If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Lot Owners without the necessity of a vote of the members or compliance with Section 7.07 above. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

*Section 9.04 Plans and Specifications.* Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Property was originally constructed and in accordance with the Community-Wide Standard, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board.

*Section 9.05 Construction Fund.* The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Lot Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Article to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board.

## **ARTICLE 10 ARCHITECTURAL CONTROLS.**

*Section 10.01 Architectural Standards.* Except as otherwise provided herein, no Owner, Occupant, or any other person may, without first obtaining the written approval of the ACC:

- (a) Make any encroachment onto the Common Property;
- (b) Construct any structure on a Lot or other improvement on a Lot;
- (c) Make any exterior change, alteration or construction on a Lot (including painting, repainting, regarding or significant landscaping modifications); or
- (d) Erect, place or post any object, sign, clothesline, fence, playground equipment, basketball goal, deck, pond, waterfall or water garden, light, artificial vegetation, exterior sculpture, fountain, flag, mailbox or other thing on the exterior of the Lot, on the dwelling on the Lot, in any windows of the dwelling on the Lot, or on any Common Property.

*Section 10.02 Procedure.* The standard for approval of such improvements shall include, but not be limited to: aesthetic consideration, materials to be used, compliance with the Community-Wide Standard, this Declaration, or the design standards which may be adopted by the ACC, harmony with the external design of the existing buildings, Lots and structures, and the location in relation to surrounding structures and topography, and any other matter deemed to be relevant or appropriate by the ACC. Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. The ACC may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction which is not in conformance with approved plans. The ACC may publish written architectural standards for exterior and Common Property

alterations or additions, and any request in full compliance therewith shall be approved; provided, however, that each such requested change shall be in harmony with the external design of the existing buildings and Lots and the location in relation to surrounding structures and topography of the vicinity. The ACC, subject to this Section, may allow such encroachments on the Common Property as it deems acceptable. If the ACC fails to approve or to disapprove such application within forty-five (45) days after the application and such information as the ACC may reasonably require shall have been submitted, its approval will not be required and this Section will be deemed complied with; provided, however, even if the requirements of this Section are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the By-Laws, the design standards, the Association's rules and regulations, or applicable zoning ordinances.

*Section 10.03 Architectural Control Committee.* The ACC shall constitute a standing committee of the Association. The ACC shall consist of the Board unless the Board delegates to other Persons the authority to serve on the ACC. The ACC shall have the authority to select and employ professional consultants to assist it in discharging its duties, the cost of such consultants to be paid by the Owner of any Lot for which plans and specifications have been submitted for approval. The Owner of any such Lot shall be responsible for paying the full costs of each review, whether or not submitted plans and specifications are approved by the ACC, and the ACC may require payment of all such costs prior to approval of plans and specifications. The ACC also may charge reasonable fees to cover the cost of review or inspections performed hereunder, and any such fees shall be published in the design standards. The Owner of a Lot must approve the proposed fees in writing. Failure to approve the charges shall be taken as the Lot owner's request to withdraw the application.

*Section 10.04 Limitation of Liability.* Review and approval of any application pursuant to this Section may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board nor the ACC shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations, and other governmental requirements. Neither the Association, the Board, the ACC, nor any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner, design, or quality of approved construction or modifications to any Lot.

*Section 10.05 No Waiver of Future Approvals.* Each Owner acknowledges that the members of the Board and the ACC will change from time to time and that interpretation, application, and enforcement of the architectural standards may vary accordingly. The approval of the ACC of any proposals, plans, and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the ACC, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

*Section 10.06 Enforcement.* Any construction, alteration, or other work done in violation of this Section, the Declaration, the By-Laws, or the design standards shall be deemed to be nonconforming. Upon written request from the Board, an Owner in violation shall, at his or her own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as it existed prior to the construction, alteration, or other work. Should such Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as it existed prior to the construction, alteration, or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the benefited Lot. In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Section and its decisions or those of the ACC. If any Owner or Occupant makes any exterior change, alteration, or construction (including

landscaping) upon the Common Property in violation of this Section, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration, or construction remain on the Common Property without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration, or construction. Furthermore, the Board shall have the authority to record notices of violation of the provisions of this Section.

*Section 10.07 Commencement of Construction.* All improvements approved by the ACC hereunder must be commenced within one year from the date of approval. If not commenced within one year from the date of such approval, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. Additionally, except with written ACC approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the ACC hereunder shall be completed within 120 days of commencement.

## ARTICLE 11 RESTRICTIONS.

*Section 11.01 Use Restrictions.* Each Owner of a Lot shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of this Declaration, the By-Laws and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants, or Occupants, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants, or Occupants. Use restrictions regarding the use of Lots and the Common Property are as follows and also as may be adopted by the Board in accordance with the terms hereof and as specified in the By-Laws.

*Section 11.02 Use of Lots.* Each Lot shall be used for residential purposes only, and each Lot shall be limited to two (2) persons residing on the Lot per designated bedroom. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing in a dwelling on a Lot may telecommute from or conduct such ancillary business activities within the dwelling so long as:

- (a) The existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the dwelling;
- (b) The business activity does not involve visitation of the dwelling by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential dwelling without business activity;
- (c) The business activity conforms to all zoning requirements for the Property;
- (d) The business activity does not increase traffic in the Property in excess of what would normally be expected for residential dwellings in the Property without business activity (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);
- (e) The business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;
- (f) The business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as determined in Board's discretion; and
- (g) The business activity does not result in a materially greater use of common area facilities or Association services.

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

*Section 11.03 Subdivision of Lots and Outbuildings.* No Lot may be subdivided into a smaller Lot and no structure of a temporary character, trailer, mobile home, manufactured home, shell home, tent, shack, carport, garage, barn or other outbuilding shall be erected or used by any Owner or Occupant on any portion of the Property, at any time, either temporarily or permanently, unless approved in writing by the ACC. This provision shall not prevent the placement by Declarant of a temporary structure, such as a mobile home, upon said premises for its use as temporary offices during the period of development of said subdivision. Auxiliary storage buildings may be constructed upon a Lot only after the specific written approval of the ACC, and in any event, must be located to the rear of the dwelling constructed upon the Lot, and must be built in a manner which substantially matches the construction and character of the dwelling located on the Lot and at a minimum must be on a concrete foundation, have siding similar to dwelling located on said Lot and have a shingled roof or the same type and color of the shingles on the dwelling located on said Lot.

*Section 11.04 Use of Common Properties.* There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on any part of the Common Property without prior written Board consent, except as specifically provided herein. With prior written Board approval, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Property for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Property hereunder shall assume, on behalf of such Owners and such Owner's guests, Occupants and family, all risks associated with the use of the Common Property and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

*Section 11.05 Nuisance and Noise.* Noxious, destructive or offensive activity shall not be carried on upon the Property. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment, discomfort, nuisance, or annoyance to other Owners or Occupants. No Owner or Occupant of a Lot may use or allow the use of the Lot or any portion of the Property in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Owners or Occupants of a portion of the Property, or in such a way as to constitute, in the Board's sole opinion, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights. No Owner or Occupant of a Lot may use or allow the use of the Lot or the Common Property in any manner which creates disturbing noises between the hours of 11:00 p.m. and 7:00 a.m. that will, in the Board's sole discretion, unreasonably interfere with the rights, comfort or convenience of the other Owners or Occupants.

*Section 11.06 Firearms and Fireworks.* The display or discharge of firearms or fireworks on the Common Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types that are capable of launching a projectile of any sort, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A. Section 25-10-1.

**Section 11.07 Pets.** No Owner or Occupant may keep any pets other than a reasonable number of generally recognized household pets on any portion of the Property, as determined in the Board's discretion. No Owner or Occupant may keep more than one (1) dog and two (2) cats and no Owner may keep any pet that weighs more than twenty (20) pounds; provided however that the Board may allow pets that weigh more than twenty (20) pounds in circumstances where an Owner has owned that pet prior to that Owner purchasing the Lot or moving into the Dwelling Unit. No Owner or Occupant may keep, breed, or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors unless kept in fenced areas. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Property without prior written approval of the ACC. While outside of fenced areas dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors. Leash length shall not allow a dog in a yard to reach the sidewalk. Feces left upon the Common Property by dogs must be immediately removed by the owner of the dog or the person responsible for the dog. No potbellied pigs may be brought onto or kept at the Property at any time. No Pit Bull Terriers or other dogs determined in the sole discretion of the Board to be dangerous may be brought onto or kept on the Property at any time by any Lot Owner, Occupant, or guest of an Owner or Occupant. Any pet which endangers the health of any Owner or Occupant of any Lot or which creates a nuisance or unreasonable disturbance, as may be determined in the Board's sole discretion, must be permanently removed from the Property upon seven (7) days' written notice by the Board. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet. Any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety, or property of any Member of the Community may be removed by the Board without prior notice to the pet's owner.

**Section 11.08 Parking.** No Owner or Occupant may keep or bring onto the Property more than a reasonable number of vehicles per Lot at any time, as determined by the Board. Disabled and stored vehicles are prohibited from being parked on the Property except in the areas provided above. For purposes of this Section, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Property for fourteen (14) consecutive days or longer without prior written Board permission. Boats, boat trailers, trucks with a load capacity of one (1) ton or more, full-size vans (excluding mini-vans or utility vehicles used as passenger vehicles), recreational vehicles (including RV's, four-wheelers, motor homes, etc.), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors are also prohibited from being parked on the Property for a period in excess of 24 hours, except in garages or other areas designated by the Board as parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the Common Property during normal business hours for the purpose of serving any Lot or the Common Property; provided, that, without the written consent of the Board, no such vehicle shall be authorized to remain on the Common Property overnight or for any purpose unless serving a Lot or the Common Property. If any vehicle is parked on any portion of the Property in violation of this Section or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Property stating the name and telephone number of the person or entity which will do the towing. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the vehicle owner or user. If a vehicle is towed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. The Association's right to tow is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.



*Section 11.09 Abandonment of Personal Property.* Personal property, other than an automobile as otherwise provided for in this Article, is prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property without prior written Board permission. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property or on the front door of the property owner's dwelling, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation. The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner; provided, however, that in such a case, the Board shall give the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed. Neither the Association nor any officer or agent thereof shall be liable to any person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

*Section 11.10 Signs.* Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected, placed, or permitted to remain on the Property without the prior written consent of the Board or its designee, except that one professional security sign not to exceed one (1) square foot may be displayed on a Lot and one (1) professionally lettered "For Rent" or "For Sale" sign not to exceed six (6) square feet in size may be displayed on a Lot being offered for sale or for lease. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. The Board also shall have the authority to adopt regulations permitting temporary signs on Lots announcing births, birthdays or other events for limited periods of time.

*Section 11.11 Rubbish Trash and Garbage.* All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except as provided herein. Rubbish, trash, and garbage shall be disposed of in appropriate sealed bags and placed in proper receptacles for collection. Garbage receptacles and bins may not be stored in the front of any house. In addition, garbage receptacles may not be stored on a corner Lot on any side of the house facing a street. On days designated for garbage pickup, garbage receptacles and bins may be placed in areas appropriate for pickup after sunset the day before the scheduled pickup. Garbage receptacles and bins must be removed from the street within 24 hours after the pickup and stored in the appropriate location.

*Section 11.12 Impairment of Dwellings.* An Owner shall do no act nor any work that will impair the structural soundness or integrity of another dwelling or impair any easement or hereditaments, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners or Occupants.

*Section 11.13 Unsightly or Unkept Conditions.* The pursuit of hobbies or other activities, including, but not limited to 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 on any part of the Property, except within a garage. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture, grills, and similar items may be kept outside of a dwelling.

*Section 11.14 Sales of Common Property.* No garage sale, carport sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Common Property without prior written Board

consent. If so permitted, any such activities shall be subject to all reasonable conditions that the Board may impose. Garage sales conducted from a Lot are permitted without prior approval.

*Section 11.15 Garages and Driveways.* Owners and Occupants are expected, wherever possible, to park their cars or other motor vehicles in their garages, on parking pads, in driveways, or in other areas designated by the ACC. When possible, all vehicles are to be parked inside enclosed garage areas, and when not possible, they shall be parked on the driveway area and not in the yard area. Garage doors should be kept closed whenever possible. All garages shall be maintained in such a manner that parking for the maximum number of motor vehicles for which they were originally designed to hold are allowed and possible; provided, however, that all garage conversions in existence at the time of the adoption of this Declaration, and made in compliance with all of the terms of the Declaration, shall not constitute a violation of this requirement. Driveways are to be kept clean and free from oil and fluid spill buildup. All driveways must be of concrete construction and shall be poured with a minimum thickness of four (4) inches. All driveways shall run from the pavement line of the street frontage of each Lot.

*Section 11.16 Antennas and Satellite Dishes.* Only DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may be installed upon a Lot in accordance with the FCC rules and the rules and regulations of the Association authorized by the FCC, both as may be amended from time to time. No transmission antenna, of any kind, may be erected anywhere on the Community without written approval of the ACC. No transmission antenna, of any kind, shall be located so as to be visible from the front of any Lot or any adjoining street to said Lot.

*Section 11.17 Laundry.* No Owner, guest, or tenant shall hang laundry from any area within or outside a dwelling residence if such laundry is within the public view, or hang laundry in full public view to dry, such as on balcony, porch, deck or terrace railings. No clotheslines, wires, of any like material or item shall be erected on any Lot for the purpose of drying clothes or laundry of any type. This provision may, however, be temporarily waived by the Declarant or the Association during a period of severe energy shortage or other conditions where enforcement of this Section would create hardship.

*Section 11.18 Holiday Decorations.* Holiday decorations may be displayed in windows only.

*Section 11.19 Foundations.* No exposed concrete blocks shall remain on any exterior wall above ground level, unless covered or finished with stucco. No stucco shall be permitted above 12 inches from the ground. All foundations shall be fully enclosed at the exterior walls; no pier-type foundations or unenclosed foundations shall be permitted.

*Section 11.20 Mailboxes.* All owners shall maintain their mailbox in accordance with uniform design and construction requirements as approved by the ACC. The mailboxes shall be kept the same color and size as constructed and established by the ACC. All house numbers shall be of the same design and size.

*Section 11.21 Windows and Window Treatments.* All window treatments facing the street shall be white in color. Storm doors shall be of high quality. No window air conditioning units shall be allowed. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose. No sheets, towels, blankets of other like material shall be used as window treatments.

*Section 11.22 Landscaping and Wells.* All yards shall be sodded. Shrubs shall be planted and maintained in accordance with the ACC landscaping requirements. Landscaping of all Lots shall be maintained as needed, whether said Lots are improved, which maintenance shall include, but not be limited to, mowing and the removal of all trash from such Lot. No individual water supply (private wells) shall be permitted on any Lot.

*Section 11.23 Oil and Mining Operations.* No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted upon or in any Lot. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

*Section 11.24 Road Purposes.* No Lot or part thereof shall, except at the sole and exclusive option of Declarant, at any time during the term of these covenants be used for road or street purposes, whether public or private; provided, however, that this covenant shall not be construed to prohibit the construction and maintenance of a driveway for purposes of providing ingress and egress from public streets in said subdivision to the residences to be constructed in said subdivision. Declarant expressly reserves the right to use any portion of a Lot for a road or street purpose prior to the sale by said Lot by Declarant or a successor declarant, and to dedicate any portion of a Lot for a road or street for public use purposes.

*Section 11.25 Excavation.* No owner shall excavate or extract earth from any of the Lots subject to this Declaration for any business or commercial purposes. No elevation changes shall be permitted which will materially affect the surface grade of a Lot unless the consent of the ACC is obtained.

*Section 11.26 Artificial Vegetation, Exterior Sculpture, Exterior Statuary and Similar Items.* No artificial vegetation or plastic animal decorations, such as pink flamingos, etc., shall be permitted on the exterior of any home and located on any Lot. Exterior sculpture, statuary, foundations, bird baths, bird house, and similar items must be approved by the ACC, but in no event shall be located so as to be visible from the front of any Lot or any adjoining street to said Lot. No more than one bird bath shall be permitted on any Lot and shall be located to the rear of the Lot. No flag pole or similar type poles are to be installed on any Lot, except for one flag which may be attached and flown on a home provided it is no larger than four (4) feet by five (5) feet.

*Section 11.27 Swimming Pools.* No swimming pool shall be constructed, erected or maintained upon any Lot without the prior written consent of the ACC and in no event shall any above-ground pool be permitted.

*Section 11.28 Motorcycles.* Motorcycles, motorbikes and like equipment and machinery maintained for the personal use of any Owner or member of the Owner's family may be garaged upon any Lot and operated upon the public streets in said subdivision, but may not be operated in any location other than upon the Lot owned by the person or persons maintaining such vehicle or permitting the same upon their Lot in said subdivision, or upon the public streets of the Subdivision.

*Section 11.29 Trees.* No cutting or other destruction of trees shall be permitted without the written consent of the ACC hereinafter established. Trees shall be kept as natural as possible.

*Section 11.30 Fuel, Water and other Tanks.* No fuel tanks of any type or water tanks of any type shall be stored or maintained upon any Lot in such a manner as to be visible from any public street or road or from any other Lot, unless used by the Declarant, temporarily, in the ordinary course of developing the Community. All propane tanks must be buried.

## ARTICLE 12 LEASING.

*Section 12.01 Leasing.* In order to protect the equity of the individual Lot Owners, to carry out the purpose for which the Property was formed by preserving the character of the Property as a homogenous residential community of predominantly owner-occupied homes and by preventing the Property from assuming the character of a renter-occupied apartment complex, 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 Article. Except as provided herein, the leasing of Lots shall be prohibited.

*Section 12.02 General Limitation of Leasing of Lots.* No Owner of a Lot may lease his or her Lot if ten percent (10%) or more of the Lots in the Property are leased, except as provided in Section 12.03 below for cases of undue hardship.

*Section 12.03 Undue Hardship.*

(a) Notwithstanding the provisions of Section 12.02 above, the Board of Directors shall be empowered to allow reasonable leasing of a Lot upon application in accordance with this Article to avoid undue hardship, including, but not limited to:

(i) Where a Lot Owner must relocate his or her residence for employment purposes and cannot, within six (6) months from the date that the Lot was placed on the market, sell the Lot for a price no greater than the current appraised market value, after having made reasonable efforts to do so;

(ii) Where the Owner dies and the Lot is being administered by his or her estate; and

(iii) Where the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot, in which case the Lot Owner must reapply every year for renewal of the hardship exception.

(b) Those Owners who have complied with this Section, have demonstrated that the inability to lease their Lot would result in undue hardship, and have obtained the requisite written approval of the Board may lease their Lots for such duration as the Board reasonably determines to be necessary to prevent undue hardship.

(c) Any Owner who believes that he or she must lease his or her Lot to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application. When an application is approved, the Owner shall provide the Board with the name and phone number of the lessee and the Owner's address other than at the Property and other such information as the Board may reasonably require within ten (10) days after a lease has been signed by both parties.

(d) The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Association Legal Instruments, in order to enforce the provisions of this Article. Any transaction which does not comply with this Article shall be voidable at the option of the Board of Directors.

*Section 12.04 Lease Provisions.* Leasing as is permitted by this Article shall be governed by the following provisions:

(a) All leases shall be in writing in a form approved by the Board prior to the effective date of the lease. All leases must be for an initial term of at least six (6) months, except with written Board approval. There shall be no subleasing or assignment of leases unless approved in writing by the Board. Lots may be leased only in their entirety; no fraction or portion may be leased. No transient tenants shall be accommodated on a Lot. All leases shall be subject to the Association Legal Instruments. The Owner must provide the lessee copies of the Association Legal Instruments, and the lease form or agreement shall provide that the Owner has done so.

(b) Within ten (10) days after entering into the lease of a Lot, the Owner shall provide the Board of Directors with the name and phone number of the lessee and the names of all other people occupying the Lot, the Owner's address other than at the Property, and such other information as the Board may reasonably require.

Notwithstanding anything in the Declaration to the contrary, failure to provide the above information to the Board within ten (10) days after entering into the lease of a Lot may result in a fine against the Owner for each day that the information is not provided to the Board. Nothing herein shall be construed as giving any party the right to approve or disapprove a proposed lessee.

(c) Any lease of a Lot shall be deemed to contain the following provisions, set forth below in subsections 12.04(c)(i) through 12.04(c)(iii) (hereinafter referred to as the "Lease Language"), whether or not expressly stated therein, and each Owner covenants and agrees that any lease of a Lot shall contain the Lease Language and agrees that if such Lease Language is not expressly contained therein, then such Lease Language shall be incorporated into the applicable 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 Lease Language into the lease:

(i) Lessee agrees to abide and comply with all provisions of the Association Legal Instruments adopted pursuant thereto. Owner agrees to cause all Occupants of his or her Lot to comply with the Association Legal Instruments adopted pursuant thereto and is responsible for all violations and losses 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 Association Legal Instruments adopted pursuant thereto. If the lessee or a person living with the lessee violates the Association Legal Instruments for which a fine is imposed, such fine may be assessed against the lessee and the Owner; provided, however, if a 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 do so. Any lessee charged with a violation of the Association Legal Instruments adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction. Any violation of the Association Legal Instruments adopted pursuant thereto is deemed to be a violation of 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 to evict the lessee on behalf of and for the benefit of the Owner, in accordance with the terms hereof, or to require the Owner to do so. In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Lot and the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof.

(ii) 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.

(iii) Lessee agrees to be personally obligated for the payment of all annual and special assessments and all other charges against the Owner which become due during the term of the lease and any other period of occupancy by the lessee or which become due as a consequence of lessee's activities, including, but not limited to, activities which violate provisions of the Association Legal Instruments adopted pursuant thereto. 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. When 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 Lot 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, as lawfully determined and made payable during the term of the lease and any other period of occupancy by lessee; provided, however, lessee need not make such payments to the Association in excess of, or prior to the due dates for monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all late charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent lessee would be required to make such payments to the Association if lessee were the Owner of the premises during the term of the agreement and any other period of occupancy by lessee.

#### **ARTICLE 13 SALE OF LOTS.**

*Section 13.01 Lot Sales.* A Lot Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give the Board written notice of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish the Board, as part of the notice, the name and address of the intended grantee and such other information as the Board may reasonably require. This Article shall not be construed to create a right of first refusal in the Association or in any third party. Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give the Board written notice of his or her ownership of the Lot. Upon failure of an Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Lot and Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

#### **ARTICLE 14 MAINTENANCE RESPONSIBILITY.**

*Section 14.01 Association's Responsibility.* The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement subject to any insurance then in effect, of all landscaping grass areas, paving and other improvements situated on the Common Property. The Association shall also maintain and keep in good repair all water and sewer pipes or facilities which serve the Common Property, to the extent that such pipes and facilities are not maintained by public, private, or municipal utility companies. The foregoing maintenance shall be performed consistent with the Community-Wide Standard. The Association shall have the right, but not the obligation, to maintain public rights of way adjacent to the Community and other property not owned by the Association if the Board determines that such maintenance would benefit the Community.

*Section 14.02 Owner's Responsibility.* Each Owner shall maintain and keep his or her Lot and dwelling in good repair, condition and order, including the seeding, watering, edge trimming and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting or other appropriate external care of all structures. Each Owner shall perform his or her responsibility hereunder in such manner so as not to unreasonably disturb other Lot Owners. Any maintenance which involves an exterior change including without limitation, repainting of the exterior improvements in a different color shall require prior approval of the ACC in accordance with Article 10 of this Declaration. The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property or from any pipe, drain, conduit, appliance or equipment which the Association

is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Article where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

*Section 14.03 Failure to Maintain.* If the Board determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board. Unless the Board determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be an assessment and lien against the Owner and the Lot. If the Board determines that the need for maintenance or repair is in the Area of Common Responsibility and is caused through the willful or negligent act of any Owner or Occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or Occupant's Lot, which shall become a lien against the Lot and shall be collected as provided herein for the collection of assessments.

*Section 14.04 Maintenance Standards and Interpretation.* The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board to another term of the Board. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Article. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

*Section 14.05 Party Walls.* Each wall or fence which shall serve and separate any two (2) adjoining Dwelling Units shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall or fence may restore it, and the Owner who is benefited by the wall or shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

*Section 14.06 Dwelling Unit Maintenance.*

- (a) Maintenance by the Association of exterior portions of Dwelling Units shall include the following:

- (i) exterior surfaces of garage doors;
  - (ii) all roofs, downspouts and gutters;
  - (iii) all exterior building surfaces with the exception of hardware and glass; provided, however, the Association shall not be responsible for waterproofing foundations either above or below grade; and
  - (iv) all driveways.
- (b) Association shall not be responsible for maintaining and keeping in good repair the following:
- (i) walkways, steps, decks (whether enclosed or not) and deck surfaces, patios (whether enclosed or not) and patio surfaces and landscaping within the patios, planters and courtyards, if any, of the Dwelling Units;
  - (ii) HVAC or similar equipment located outside the Dwelling Units;
  - (iii) all doors, including screen and storm doors, hinges, frames and door frames and hardware which are part of the entry system;
  - (iv) hose bibs contained in exterior walls of Dwelling Unit;
  - (v) lighting fixtures pertaining to a particular Dwelling Unit and being located outside an entryway or in a garage;
  - (vi) window screens, window frames and glass;
  - (vii) foundations and footings, including waterproofing; and
  - (viii) pipes which serve only one (1) Dwelling Unit whether located within or outside of the Dwelling Unit's boundaries.
- (c) The Board of Directors may promulgate rules setting forth the extent of maintenance to be performed by the Association and may assume responsibility for providing additional maintenance as long as Dwelling Units have equal rights to maintenance. 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.

## **ARTICLE 15 MORTGAGEE'S RIGHTS.**

*Section 15.01 Mortgagee Vote Requirements.* Unless at least two-thirds (2/3) of the first Mortgagees and Lot Owners give their consent, the Association shall not:

- (a) By act or omission seek to abandon or terminate the Property or the Association;
- (b) Change the pro rata interest or obligations of any individual Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
- (c) Partition or subdivide any Lot;
- (d) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property (the granting of utility easements or rights-of-way for public purposes and the granting other easements for the benefit of the Association shall not be deemed a transfer within the meaning of this clause); or
- (e) Use hazard insurance proceeds for losses to any portion of the Property (whether to Lots or to Common Property) for other than the repair, replacement, or reconstruction of such portion of the Property. The provisions of this Section shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Lot Owners where a larger percentage vote is otherwise required by the Association Legal Instruments for any of the actions contained in this Article.

*Section 15.02 Foreclosure.* Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which



became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

**Section 15.03 Written Request.** Upon written request to the Association, identifying the name and address of the holder and the Lot number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Property or any Lot on which there is a first Mortgage held by such Eligible Mortgage Holder;
- (b) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Lot Owner of any other obligation under the Association Legal Instruments which is not cured within sixty (60) days;
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

**Section 15.04 Copy of Financial Statement.** Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after such request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

**Section 15.05 Rights to Mortgagee.** Notwithstanding anything to the contrary herein contained, the provisions of Articles 12 and 13 governing sales and leases shall not apply to impair the right of any first Mortgagee to:

- (a) Foreclose or take title to a Lot pursuant to remedies contained in its Mortgage;
- (b) Take a deed or assignment in lieu of foreclosure; or
- (c) Sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

## ARTICLE 16 EASEMENTS.

**Section 16.01 General.** Each Dwelling Unit shall be subject to those easements, if any, shown or set forth on the recorded subdivision plat for the Property, as amended from time to time as well as the easements now or hereafter established by the Declarant in this Declaration or by any other documents recorded in the Office of the Clerk of the Superior Court of the County where the Property lies.

**Section 16.02 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 his or her Lot. Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his or her family and his or her tenants and guests, and shall be deemed to have made a delegation of all such rights to the Occupants of his or her Lot, if leased. This easement and right of use shall be subject to the following:

- (a) The right of the Association to charge reasonable fees for the use of any clubhouse, to limit the number of guests of Lot Owners and tenants who may use any clubhouse, and to provide for the exclusive use and enjoyment of any clubhouse at certain designated times by an Owner, his or her family, tenants, guests, and invitees;

(b) The right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the recreational facilities in the Property for any period during which any assessment against his or her Lot which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Association Legal Instruments;

(c) The right of the Association to borrow money as may be set forth in the By-Laws; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property);

(d) The right of the Association to grant permits, licenses or easements across the Common Property, as authorized in this Declaration or the By-Laws; and

(e) The right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association.

**Section 16.03 Easement for Entry.** The Association shall have an easement to enter onto any Lot for emergency, security, safety, and for other purposes reasonably necessary for the proper maintenance and operation of the Property, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner or Occupant. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event that an Owner fails or refuses to cure the condition upon request by the Board.

**Section 16.04 Easements for Encroachment and Overhang.** There is hereby reserved to the Declarant for the benefit of each Dwelling Unit a reciprocal appurtenant easement for encroachment and overhang between adjacent Dwelling Units and between Dwelling Unit and adjacent Common Property due to the original construction or 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 two (2) feet, as measured from any point on such common boundary; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association, other than the Declarant in the original construction of the Dwelling Units.

**Section 16.05 Easements for Driveway Encroachment.** There is hereby reserved appurtenant easements for encroachment as between each Dwelling Unit and such portion or portions of the driveway serving an adjacent Dwelling Unit due to the placement or settling or shifting of the driveway constructed, reconstructed, or altered thereon, to a distance of not more than two (2) feet, as measured from any point on the common boundary between adjacent Dwelling Units 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 willful conduct on the part of an Owner or Occupant after the initial construction of improvements by Declarant.

*Section 16.06 Easement for Utilities – Association and Declarant.* There is hereby reserved to the Declarant and granted to the Association a blanket easement upon, across, above and under all property within the Property for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining all Property utilities serving the Property or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television system, or security system which the Declarant or the Association might decide to have installed to serve the Property Declarant, the Association or the designee of either, as the case may be, may install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any part furnishing any such utility or service request a specific license or easement by separate recordable document, the declarant or the Board shall have the right to grant such easement.

*Section 16.07 Easement for Utilities – Dwelling Unit Owner.* Declarant hereby establishes for the benefit of each Dwelling Unit a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cable, conduits, utility lines, flues and ducts serving such Dwelling Unit and situated in, on or under any Dwelling Unit or the Property. The Board of Directors, and without a vote of the Owners, shall have the right, power and authority to grant permits, licenses, utility easements, and other easements, permits or licenses necessary or desirable through, or over the Dwelling Units or the Common Property as may be reasonably necessary to or desirable. In the event that any Owner desires access to another Dwelling Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owner of such other Dwelling Unit(s) at least two (2) days in advance of the date that access is needed and attempt to agree on a convenient date and time of access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a Dwelling Unit to which access is needed under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Dwelling Units, reasonable steps shall be taken to protect such Dwelling Units and the property of the Owners and Occupants thereof, and damage shall be repaired by the person causing the damage at its sole expense.

*Section 16.08 Easement for Emergency Entry.* The Association shall have the right, but not the obligation, to enter upon any Dwelling Unit for emergency, security and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, the Bylaws, and rules, which right may be exercised by any member of the Board, the officers, agents, employees, and managers of the Association and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Dwelling Unit to cure any condition which may increase the possibility of a fire or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association, but shall not authorize entry into the interior living space of any Dwelling Unit without permission of the Owner.

*Section 16.09 Easement for Association Maintenance.* Declarant hereby grants to the Association a perpetual easement across all Dwelling Units as may be reasonable necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Dwelling Units, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole expense. Except in an emergency situation, entry to the interior of a Dwelling Unit shall only be during reasonable hours and after notice to the Owner.

*Section 16.10 Easement for Dwelling Unit Maintenance.* Declarant hereby reserves for the benefit of each Dwelling Unit reciprocal appurtenant easements between adjacent Dwelling Units for the purpose of maintaining or repairing the improvements located on each Dwelling Unit which easement shall extend to a distance of five (5) feet as measured from any point on the common boundary between the Dwelling Units. The easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the Dwelling Unit over which this easement is exercised which arises out of such maintenance or repair work.

*Section 16.11 Easement for Drainage.* There is hereby reserved to the Declarant and granted to the Association a blanket easement for creating and maintaining satisfactory drainage across the Property; provided however such easement area shall not include any portion of a Dwelling Unit upon which the foundation of a Dwelling Unit is located. This easement shall include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. Neither the Declarant, the Association or any Owner constructing according to plans and specifications shall have any liability to any Owner due to the increased flow or increased velocity of the surface water resulting from approved construction of a Dwelling Unit.

*Section 16.12 Easement During Construction and Sale Period.* Notwithstanding any provisions now or hereafter contained in this Declaration, the "Bylaws, Articles of Incorporation, use restrictions, rules and regulations, architectural guidelines, and amendments thereto, Declarant reserves an easement across the Community for Declarant to maintain and carry on, upon such portion of the Property as Declarant may reasonable deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's development, construction and sales activities, including, but not limited to: the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Property, including limitation, any Dwelling Unit; the right to tie into any portion of the Property with streets, driveways, paths, parking areas and walkways; the right to tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, or Property under or over the Property, the right to convert Dwelling Units (with the consent of the Owner thereof) to Common Property; the right to construct utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Property; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant may use Dwelling Units, office or other buildings owned or leased by Declarant as model homes. This Section shall not be amended without the Declarant's written consent until the Declarant's rights hereunder have terminated as herein provided.

*Section 16.13 Easement for Private Streets, Sidewalks and Signs.* Declarant hereby grants, conveys, declares, creates, imposes and establishes a perpetual, non-exclusive right of way easement for vehicular and pedestrian access, ingress and egress over and across the private streets within the Property. The right of way easement herein granted shall permit joint usage of such easement by (a) the Owners and Occupants, (b) the legal representatives, successors and assigns of the Owners, and (c) invitees and licensees of the Owners and Occupants. Declarant hereby expressly reserves for itself, its successor and assigns, all rights and privileges incident to the ownership of the fee simple estate of any right of way easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional non-exclusive easements to third parties, over, under and across the easement area. Declarant hereby reserves for the benefit of Declarant and grants to the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across those utility easement areas and private streets and roads for the installation, maintenance and use of such streets and roads, sidewalks, traffic

directional signs, grading for proper drainage of said streets and roads, and related activities and improvements.

## **ARTICLE 17 GENERAL PROVISIONS.**

*Section 17.01 Security.* The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Property. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Lot Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

*Section 17.02 Dispute Resolution.* Any Lot Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any officer or director, or any property manager of the Association. The Owner or Occupant shall, in such notice and at such hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing from the person requesting the hearing.

*Section 17.03 No Discrimination.* No action shall be taken by the Association or the Board of Directors which would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status, sexual orientation, or handicap.

*Section 17.04 Indemnification.* The Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director 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 or director may be a party by reason of being or having been an officer or director. The officers and directors 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 and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director 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 or director, or former officer or director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

*Section 17.05 Implied Rights.* The Association may exercise any right or privilege given to it expressly by the Association Legal Instruments, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

*Section 17.06 Condemnation.* Whenever all or any part of the Common Property shall be taken or conveyed in lieu of or under threat of condemnation by any authority having power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. If the taking involves a portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking at least seventy-five (75%) percent of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefore and to the extent that such restoration is reasonable. The provisions of Article 9, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

*Section 17.07 Amendments.* Except where a higher vote is required for action under any other provisions of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote thereof. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in recorded in the office of the Clerk of the Superior Court of the county wherein the Property lies. In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one (51%) percent of the votes of Lots that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested. Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with the Act, any applicable state, city or federal law, including but not limited to compliance with applicable guidelines of the FHA, the VA, the FNMA, the FHLMC or the HUD. Any action to challenge validity of an amendment adopted under this Article must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

*Section 17.08 Additions by Declarant as a matter of right.* With further assent or permit, Declarant, for itself, its successors and assigns, hereby reserves the right, exercisable from time to time, to extend the scheme of this Declaration to other real property by filing for record a supplemental declaration in respect to the property to be then subjected to this Declaration.

*Section 17.09 Dedication.* It is contemplated by Declarant that certain lands now or hereafter made subject to be shown on a plat of survey which includes Lots now or hereafter made subject to this Declaration may be developed or used as recreational areas, including parks and playgrounds, or as greenbelts, open spaces or walkways, and unless and until such time as Declarant shall convey by deed such property to the Association, neither the development or use of such property for any of such purposes shall constitute or be construed by implication to be a covenant, restriction, or representation that such property is dedicated or otherwise permanently committed for any of such purposes, the possible sale of such property for residential purposes, or the use thereof for other purposes, being expressly contemplated and reserved by Declarant.

*Section 17.10 Variances.* The Declarant shall have the power and authority, in its sole discretion, to grant variances to this Declaration provided, however, that such variances shall be reasonably consistent with the purpose of this Declaration and shall not materially and adversely affect any existing

improvements. Whenever, in the exercise of its discretion, the Declarant grants a variance to this Declaration, each Owner and Occupant of a building site hereby acknowledges that such variance shall constitute a waiver of any conflicting provisions of this Declaration. Each Owner and Occupant of a building site appoints the Declarant as its true and lawful attorney-in-fact for the limited purpose of consenting to and granting variances.

*Section 17.11 Delegation and Assignability.* Declarant shall at all times and from time to time have the right to delegate or assign to the Association any and all functions or rights reserved to Declarant under this Declaration. Any function or right so delegated or assigned to the Association may be exercised as the Board of Directors of the Association shall determine.

*Section 17.12 Enforcement.* Enforcement of the covenants and restrictions contained herein and of any other provision hereof shall be by any appropriate proceeding at law or in equity against any person or persons violating or attempting to violate said covenants, restrictions or other provisions, either to restrain violation, to enforce personal liability, or to recover damages, or by any appropriate proceeding at law or in equity to enforce any charge or lien arising by virtue thereof. Any failure by Declarant, the Association or any Owner to enforce any of said covenants and restrictions or other provisions shall in no event be deemed a waiver of the right to do so thereafter.

*Section 17.13 Duration.* This Declaration shall run with and bind the Property perpetually to the extent provided in the Act.

*Section 17.14 Mergers.* Pursuant to a merger or consolidation of the Association, the Association's properties, rights and obligations may be transferred to another non profit corporation, or the properties, rights and obligations of another non profit corporation may be transferred to the Association. The surviving or consolidated corporation may administer the covenants and restrictions applicable to the property now or hereafter made subject to this Declaration together with the covenants and restrictions which either the merging corporation or corporations or the surviving or consolidated corporation was, or were, otherwise entitled to administer. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants and restrictions hereby made applicable to the Property described in this Declaration, provided that, as hereinabove provided, the members of the Association, may, as an incident to any such merger or consolidation, make changes in the method of calculating the maximum amount of the annual assessments and may amend the covenants and restrictions.

*Section 17.15 No Waiver.* The failure of the Declarant, the Association, or the Owner of any Lot, or his or her or its respective legal representatives, heirs, successors, and assigns, to enforce any restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior to or subsequent thereto.

*Section 17.16 No Liability.* Declarant has, using its best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and power to enforce any provision of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person or entity) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed or otherwise conveyed a Lot, acknowledged that Declarant shall have no such liability.

*Section 17.17 Severability.* Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provisions of this Declaration or the application hereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without

the invalid provision or application and to this end the provisions of this Declaration are declared to be severable.

*Section 17.18 Captions.* The captions of each Article, Section, and Subsection hereof 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 Sections to which they refer.

*Section 17.19 Litigation.* No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five (75%) percent of the total Association vote. This section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article 7 hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

*Section 17.20 Implied Rights.* The Association may exercise any right or privilege given to it expressly by the Association Legal Instruments, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

*Section 17.21 Conflicts.* In the case of any conflict between or among any of the Association Legal Instruments, the Articles of Incorporation shall control over both this Declaration and the Bylaws, and this Declaration shall also control over the Bylaws.

*Section 17.22 Preparer of Documents.* This Declaration was prepared by J. Tom Minor, IV, Minor, Bell and Neal, P.C., P.O. Box 2586, Dalton, GA 30722-2586.

**IN WITNESS WHEREOF**, the undersigned, being officers of the Declarant herein, have hereunto set their hands and seals, this the \_\_\_\_ day of \_\_\_\_\_, 2009.

Signed, sealed and delivered  
In the presence of:

**Catoosa Development, LLC**

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_ (Seal)  
Manager

My commission expires:

[Notarial Seal]



the invalid provision or application and to this end the provisions of this Declaration are declared to be severable.

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Signed, sealed and delivered  
In the presence of:

**Catoosa Development, LLC**

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_ (Seal)  
Manager

My commission expires:

[Notarial Seal]

**EXHIBIT "A"**

**BY-LAWS  
OF  
\_\_\_\_\_, INC.**

**ARTICLE 1 NAME AND LOCATION**

*Section 1.01 Name.* The name of the corporation is \_\_\_\_\_ Inc., hereinafter referred to as the "Association". The principal office of the Association shall be located at \_\_\_\_\_, but meetings of Members and Directors may be held at such places within the State of Georgia, as may be designated by the Board of Directors.

**ARTICLE 2 DEFINITIONS**

*Section 2.01 Definitions.* Generally, terms used in the Association Legal Instruments shall have their normal, generally accepted meanings or the meanings given in the Act or the Georgia Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in the Association Legal Instruments shall be defined as follows:

- (a) "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of \_\_\_\_\_, Inc., filed with the Secretary of State of the State of Georgia.
- (b) "Association" shall mean and refer to \_\_\_\_\_, Inc., a Georgia nonprofit corporation, its successors and assigns.
- (c) "Association Legal Instruments" means these By-Laws, the Declaration, the Articles of Incorporation, the restrictions or rules, and the plats of survey and plans of the Property, all including any Exhibits thereto, and all as may be supplemented or amended.
- (d) "Board" or "Board of Directors" means the elected body responsible for management and operation of the Association.
- (e) "Common Area" or "Common Property" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.
- (f) "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions for The Reserve at Battlefield Crossing Subdivision, applicable to the Property recorded in the office of the Clerk of the Superior Court of the county wherein the Property lies.
- (g) "Director" shall mean and refer to those persons elected as the body responsible for management and operation of the Association.
- (h) "Lot" means a portion of the Property intended for ownership and use as permitted in the Declaration, and such additions as may be hereto brought with the jurisdiction, as shown on the plats for the Property, or amendments or supplements thereto.
- (i) "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

(j) "Owner" shall mean and refer to the record titleholder of a Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(k) "Property" shall mean and refer to that certain real property described in the Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

### **ARTICLE 3 MEETINGS OF MEMBERS**

*Section 3.01 Annual Meetings.* The first annual meeting of the Members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at the hour of seven o'clock, p.m. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

*Section 3.02 Special Meetings.* Special meetings of the Members may be called at any time by the president, by the Board of Directors, or upon written request of the Members entitled to vote one-fourth (1/4) of all of the votes of the membership of the Association.

*Section 3.03 Notice of Meetings.* Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or another person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of such notice. Such notice shall specify the place, day and hour of the meeting and, in case of a special meeting, the purpose of the meeting.

*Section 3.04 Quorum.* The presence at the meeting of Members or proxies entitled to cast one-tenth (1/10) of the votes of the membership of the Association shall constitute a quorum for any action except as otherwise provided in the Association Legal Instruments. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting without notice other than announcement at such meeting, until a quorum as aforesaid shall be present or be represented.

*Section 3.05 Proxies.* At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon any conveyance by the Member of his Lot.

*Section 3.06 Action Without A Formal Meeting.* Any action required or permitted to be approved by the Members may be approved without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed and dated by Members (including the Declarant, if the consent of the Declarant is required) holding the voting power required to pass such action at a meeting held on the record date for such action. The record date for such action shall be the date that the first member signs a consent. Such action shall be approved when the Secretary receives a sufficient number of such consents dated within 30 days of the record date

for such action. If less than unanimous consent is obtained, the approval shall be effective ten days after the Secretary gives written notice of the approval to all Members who did not sign a consent. Each signed consent shall be included in the minutes of meetings of members filed in the permanent records of the Association.

*Section 3.07 Action by Written Ballot.* Any action that may be taken at any annual, regular or special meeting of Members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked. Approval by written ballot of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

#### **ARTICLE 4 BOARD OF DIRECTORS**

*Section 4.01 Number.* The affairs of the Association shall be managed by a Board of not more than seven (7) nor less than three (3) Directors, who need not be Members of the Association.

*Section 4.02 Term of Office.* At the first annual meeting and at each annual meeting thereafter, the Members shall elect Directors to serve for a term of one year or until a successor shall be elected and shall qualify.

*Section 4.03 Removal.* Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of that Director's predecessor.

*Section 4.04 Compensation.* No Director shall receive compensation for any service he may render to the Association; however, Directors may be reimbursed for their actual expenses incurred in the performance of their duties.

*Section 4.05 Action Taken Without a Meeting.* The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

*Section 4.06 Action Without A Formal Meeting.* Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by a majority of the Directors and delivered to the Association for inclusion in the minutes for filing in the corporate records.

*Section 4.07 Telephonic Participation.* One or more Directors may participate in and vote during any meeting of the Board by telephone conference call or any other means of communication by which all Directors participating may simultaneously hear each other during the meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

## **ARTICLE 5 NOMINATION AND ELECTION OF DIRECTORS**

*Section 5.01 Nomination.* Nomination for election to the Board of Directors shall be made by a nominating committee. Nominations may also be made from the floor at annual meetings. The nominating committee shall consist of a chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The nominating committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies there are to be filled. Such nominations may be made from among the Members or non-Members.

*Section 5.02 Election.* Election to the Board of Directors shall be by secret ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## **ARTICLE 6 MEETINGS OF DIRECTORS**

*Section 6.01 Regular Meetings.* Regular meetings of the Board of Directors shall be held without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then such meeting shall be held at the same time on the next day which is not a legal holiday.

*Section 6.02 Special Meetings.* Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two Directors, after not less than three (3) days notice to each Director.

*Section 6.03 Quorum.* A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present during a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

*Section 4.06 Action Without A Formal Meeting.* Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by a majority of the Directors and delivered to the Association for inclusion in the minutes for filing in the corporate records.

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*Section 6.03 Quorum.* A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present during a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE 7 POWERS AND DUTIES OF DIRECTORS

*Section 7.01 Powers.* The Board of Directors shall have power to:

- (a) Adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) Suspend the voting rights and right to use of the recreational facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied against such member by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for the infraction of published rules and regulations;
- (c) Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Membership by other provisions of Association Legal Instruments;
- (d) Declare the office of a member of the Board of Directors to be vacant in the event that such member shall be absent from three (3) consecutive meetings of the Board of Directors;
- (e) Employ a manager, an independent contractor, or such other employees as the Board of Directors may deem necessary, and to prescribe their duties; and
- (f) Foreclose the lien against any Lot for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the Owner personally obligated to pay the same.

*Section 7.02 Duties.* It shall be the duty of the Board of Directors to:

- (a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members of the Association who are entitled to vote;
- (b) Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;
- (c) As more fully provided in the Declaration, to fix the amount of the annual assessment against each Lot;
- (d) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificates. If such a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) Procure and maintain adequate liability and hazard insurance on Common Property; and
- (f) Cause the Common Area to be maintained.



## ARTICLE 8 OFFICERS

*Section 8.01 Enumeration of Offices.* The officers of the Association shall be a president, and vice president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

*Section 8.02 Election of Officers.* The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

*Section 8.03 Term.* The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, be removed, or otherwise disqualify to serve.

*Section 8.04 Special Appointments.* The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

*Section 8.05 Resignation and Removal.* Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

*Section 8.06 Vacancies.* A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

*Section 8.07 Multiple Offices.* The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 8.04 of this Article.

*Section 8.08 Duties.* In addition to the duties otherwise enumerated in the Association Legal Instruments, the duties of the officers are as follows:

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, promissory notes, mortgages, deeds and other written instruments.

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

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

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks; shall keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

#### **ARTICLE 9 COMMITTEES**

*Section 9.09 Committees.* The Association shall appoint an architectural control committee, as provided in the Declaration, and a nominating committee, as provided in these By-Laws. In addition to the foregoing, the Board of Directors shall appoint other committees as deemed appropriate in carrying out the purpose of the Association.

#### **ARTICLE 10 BOOKS AND RECORDS**

*Section 10.09 Books and Records.* The books, records, and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the By-Laws shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

#### **ARTICLE 11 ASSESSMENTS**

*Section 11.09 Assessments.* As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made.

#### **ARTICLE 12 CORPORATE SEAL**

*Section 12.09 Corporate Seal.* The Association shall have a seal in circular form having within its circumference the words: \_\_\_\_\_, Inc.

#### **ARTICLE 13 AMENDMENTS AND CONFLICT**

*Section 13.09 Amendments.* These By-Laws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy.

*Section 13.10 Conflicts.* In the case of any conflict between or among any of the Association Legal Instruments, the Articles of Incorporation shall control over both the Declaration and these Bylaws, and the Declaration shall also control over these Bylaws.

**ARTICLE 14 FISCAL YEAR**

*Section 14.09 Fiscal Year.* The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**In Witness Whereof**, we, being all of the Directors of the Association have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATION**

I, the undersigned, do hereby certify:

**That** I am the duly elected and acting secretary of \_\_\_\_\_, Inc., a Georgia Non-Profit Corporation; and

**That** the foregoing By-Laws constitute the original By-Laws of said \_\_\_\_\_, Inc., as duly adopted at a meeting of the Board of Directors thereof, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**In Witness Whereof**, I have hereunto subscribed my name and affixed the deal of \_\_\_\_\_, Inc. this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Secretary

CATOOSA COUNTY, GEORGIA  
Filed and recorded in this office

Apr. 15, 2009 at 9:05 AM  
Recorded in Deed Book 1501 Page 594  
NORMAN L. STONE, Clerk

[Space above this line for recording data.]

Please Record and Return To:

J. Tom Minor, IV  
Minor, Bell & Neal, P.C.  
P.O. Box 2586  
Dalton, GA 30722-2586

**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR THE RESERVE AT BATTLEFIELD CROSSING,  
A PLANNED RESIDENTIAL COMMUNITY SUBDIVISION**

Georgia, Catoosa County

This First Amendment to Declaration of Covenants, Conditions and Restrictions For The Reserve at Battlefield Crossing, a Planned Residential Community Subdivision (hereinafter referred to as this "This Amendment"), made on the date hereinafter set by Catoosa Development, LLC, a Georgia limited liability company, (hereinafter referred to as the "Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the developer of a subdivision known as The Reserve at Battlefield Crossing, which subdivision includes certain real estate located in Land Lot No. 126 the 9<sup>th</sup> District and 4<sup>th</sup> Section of Catoosa County, Georgia, as shown by plat of survey recorded in Plat Book 21 Page 242, Catoosa County, Georgia Land Records (hereinafter referred to as "The Reserve"); and

WHEREAS, Declarant declared The Reserve to be subject to that certain Declaration of Protective Covenants, Conditions and Restrictions for The Reserve at Battlefield Crossing, A Planned Residential Community Subdivision, dated April 24, 2009, and recorded in Deed Book 1482 Page 742, Catoosa County, Georgia Land Records (the "Declaration"); and

**WHEREAS**, Declarant desires to amend the Declaration as contemplated in Article 17, Section 17.07 of the Declaration;

**NOW THEREFORE**, for and in consideration of the premises, and of the benefits to be derived by declaring in each and every subsequent owner any and all of the lots in The Reserve, Declarant does hereby set up, establish, promulgate and declare as follows:

#### **ARTICLE 1**

**SECTION 14.01** Declarant hereby amends the Declaration by deleting Section 14.01 of Article 14 in its entirety and in its place substituting the following:

*Section 14.01 Association's Responsibility.* The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement subject to any insurance then in effect, of all landscaping grass areas, paving and other improvements situated on the Common Property. The Association shall also maintain and keep in good repair all water and sewer pipes or facilities which serve the Common Property, to the extent that such pipes and facilities are not maintained by public, private, or municipal utility companies. The foregoing maintenance shall be performed consistent with the Community-Wide Standard. The Association shall have the right, but not the obligation, to maintain public rights of way adjacent to the Community and other property not owned by the Association if the Board determines that such maintenance would benefit the Community. The Association shall maintain and keep each Lot and dwelling in good repair, condition and order, including the seeding, watering, edge trimming and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting or other appropriate external care of all structures. The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Article where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

**SECTION 14.02** Declarant hereby amends the Declaration by deleting Section 14.02 of Article 14 in its entirety.

BK1501PG0596

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal this the 31st day of August, 2009.

Signed, sealed and delivered  
in the presence of:

Catoosa Development, LLC

*Maria Deane*  
\_\_\_\_\_  
Unofficial Witness  
*[Signature]*  
\_\_\_\_\_  
Notary Public  
My commission expires: [Seal]

By: *[Signature]* (Seal)  
Manager

My Commission  
Expires Jan 23, 2011

Telstar Partners, LLC joins in the execution of this First Amendment for the purpose of consenting thereto.

Signed, sealed and delivered  
in the presence of:

Telstar Partners, LLC

*Maria Deane*  
\_\_\_\_\_  
Unofficial Witness  
*[Signature]*  
\_\_\_\_\_  
Notary Public  
My commission expires: [Seal]

By: *[Signature]* (Seal)  
Manager

My Commission  
Expires Jan 23, 2011

Derris Construction, Inc. joins in the execution of this First Amendment for the purpose of consenting thereto.

Signed, sealed and delivered  
in the presence of:

Derris Construction, Inc.

*[Signature]*  
\_\_\_\_\_  
Unofficial Witness  
*[Signature]*  
\_\_\_\_\_  
Notary Public  
My commission expires: [Seal]

By: *[Signature]* (Seal)

Attest: *[Signature]* (Seal)

My Commission  
Expires Jan 23, 2011

BK1501PG0597

Tallred Home Construction, Inc. joins in the execution of this First Amendment for the purpose of consenting thereto.

Signed, sealed and delivered  
In the presence of:

Tallred Home Construction, Inc.

*[Signature]*  
Notary Public  
My Commission Expires Jan 23, 2011

By: *[Signature]* (Seal)

Attest: *[Signature]* (Seal)

Covenant Bank & Trust as the holder of a security interest from Declarant in the undeveloped portion of the property in The Reserve, as the holder of a security interest from Tallred Home Construction, Inc. in Lot No. 9 of The Reserve, as the holder of a security interest from Derris Construction, Inc. in Lot No. 10 of The Reserve, and as the holder of a security interest from Telstar Partners, LLC in Lot Nos. 11 and 12 of The Reserve joins in the execution of this First Amendment for the purpose of consenting thereto.

Signed, sealed and delivered  
In the presence of:

Covenant Bank & Trust

*[Signature]*  
Notary Public  
My Commission Expires Jan 23, 2011

By: *[Signature]* (Seal)  
Title: EVP

Belk & Company as the holder of a security interest from Declarant in the undeveloped portion of the property in The Reserve joins in the execution of this First Amendment for the purpose of consenting thereto.

Signed, sealed and delivered  
In the presence of:

Belk & Company

*[Signature]*  
Unofficial Witness

By: *[Signature]* (Seal)  
Title: President

*[Signature]*  
Notary Public  
My Commission Expires Jan 23, 2011