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DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
SOUTH ON MAIN COMMERCIAL CENTER

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP OWNERS ASSOCIATION, BUT DOES NOT SUBMIT THE DEVELOPMENT TO THE GEORGIA CONDOMINIUM ACT, O.C.G.A. § 44-3-70, ET SEQ. OR THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. § 44-3-220, ET SEQ.

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DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
SOUTH ON MAIN COMMERCIAL CENTER

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR SOUTH ON MAIN COMMERCIAL CENTER ("Declaration") is made as of the date hereinafter set forth by **SOUTH ON MAIN, LLC**, a Georgia limited liability company, f/k/a BREEZY HILL LAND, LLC, a Georgia limited liability company (hereinafter sometimes referred to as "Declarant");

W I T N E S S E T H

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" hereof;
and

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereof to the provisions of this Declaration to create a commercial development and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" attached hereto and by this reference incorporated herein is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of the real property now and hereafter made subject hereto, their heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

Article I
Definitions

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

1.1 "Articles of Incorporation" means the Articles of Incorporation of South on Main Commercial Owners Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.2 "Association" means South on Main Commercial Owners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

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

1.4 "Bylaws" means the Bylaws of South on Main Commercial Owners Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference as may be amended from time to time.

1.5 "Common Property" means any and all real and personal property, and the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.6 "Condominium" means that certain real property in the Development, if any, which constitutes a condominium in accordance with the provisions of the Georgia Condominium Act (O.C.G.A. 44-3-70, *et seq.*) (the "Condominium Act"), which is subject to the Condominium Declaration and governed by the Condominium Association.

1.7 "Condominium Association" means the Georgia nonprofit corporation or other mandatory membership owners association, if any, established to administer a Condominium within the Development, its successors and assigns. Any Condominium Association shall have concurrent jurisdiction with the Association over the Condominium and the Condominium Units located therein.

1.8 "Condominium Declaration" shall refer to any declaration of condominium or similar instrument recorded in the Cherokee County, Georgia land records, that establishes all or a portion of the Development as a Condominium. Any covenants, restrictions, and easements established in any such Condominium Declaration shall be in addition to those contained in this Declaration

1.9 "Condominium Unit" shall mean any portion of a Condominium which may be independently owned and conveyed for occupancy and which constitutes or will constitute, after the recording of a Condominium Declaration, a unit as defined in the Condominium Act and as more particularly described in the Condominium Declaration. The ownership of each Condominium Unit shall include, and there shall automatically pass with the title to each Condominium Unit as an appurtenance thereto, whether or not separately described, membership in the Association and any applicable Condominium Association and all of the rights and interest of an Owner in and to the Common Property, as herein provided.

1.10 "Declarant" means **SOUTH ON MAIN, LLC**, a Georgia limited liability company and its successor, successor-in-title or assignee taking title to any portion of the property described in Exhibit "A" or Exhibit "B" hereof for the purpose of development and/or sale and designated as Declarant in a recorded instrument by the then holder of rights of Declarant hereunder. Any or all of the rights of Declarant set forth in this Declaration or the Articles of Incorporation or the Bylaws may be transferred or assigned in whole or in part to other Persons, provided that, no such transfer or assignment shall be effective unless it is in a

written instrument signed by Declarant and recorded in the Cherokee County, Georgia land records.

1.11 "Development" refers to the real property described in Exhibit "A", attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein.

1.12 "Easement and Cost Sharing Agreement" means that certain Declaration of Easements and Cost Sharing Agreement, by and between Declarant, the Association and South on Main Community Association, Inc., a Georgia nonprofit corporation, recorded contemporaneously herewith in the Cherokee County, Georgia records, which document establishes certain easements, obligations and restrictions for the benefit and burden of the Development.

1.13 "Member" means a member of the Association.

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

1.15 "Mortgagee" means the holder of a Mortgage.

1.16 "Occupant" means any Person occupying all or any portion of a Unit for any period of time, including, without limitation, the Owner and any tenant of the Owner.

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

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

1.19 "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein and/or removes property from the provisions of this Declaration, all as provided in this Declaration.

1.20 "Total Association Vote" means the votes attributable to the entire membership of the Association (including votes of Declarant), not merely a majority vote of the Members attending a meeting of Members.

1.21 "Unit" means any portion of the Development subjected to this Declaration, excluding the Common Property, whether improved or unimproved which may be independently owned and conveyed, including, without limitation a Condominium Unit. The ownership of

each Unit shall include, and there shall pass with the title to each Unit as an appurtenance thereto, whether or not separately described, all of the rights and interest of an Owner in the Common Property as herein provided, together with membership in the Association. Where a Unit is attached by a party wall to one or more other Units, the boundary between adjacent Units shall be a line running along the center of the party wall separating the adjacent Units unless otherwise provided in a Condominium Declaration.

Article II Property Subject to this Declaration

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

2.2 Annexation by Declarant. With the written consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "B" attached hereto and by this reference incorporated herein, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Cherokee County, Georgia land records a Supplementary Declaration describing the property being subjected. Any annexation shall be effective upon the filing for record of a Supplementary Declaration unless a later effective date is provided therein.

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

2.4 Removal of Property. If included in error or due to changes in the Declarant's land plan for the Development that in the sole discretion of Declarant in a particular case are not inconsistent with the overall scheme of development for the Development, property subject to this Declaration may be subsequently removed by the Declarant, with the consent of the Owner thereof, from the provisions of this Declaration and the jurisdiction of the Association. Any such removal shall be accomplished by the filing for record of an amendment to this Declaration describing the property removed and shall be effective upon filing in the Cherokee County, Georgia land records unless a later effective date is provided therein. Such amendment shall be executed by the Declarant and the Owner of the property being removed and shall not require the vote or consent of any other Person.

2.5 Additional Covenants, Restrictions and Easements. Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplementary Declaration to additional covenants, restrictions and easements and/or modify the applicability of the covenants, restrictions and easements contained in this Declaration as to such property. Such additional covenants, conditions, restrictions and easements may be set forth in a Supplementary Declaration or a separate declaration of protective covenants, declaration of condominium or other document filed either concurrently with or after the annexation of the subject property. Any such document filed by Declarant may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting a Unit without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Cherokee County, Georgia land records. No such instrument recorded by any Person, other than the Declarant pursuant to this section, may conflict with the Declaration, Bylaws or Articles. In the event a declaration of condominium is recorded in the Cherokee County, Georgia records which affects a Unit and establishes a condominium association to administer the declaration of condominium, thereafter, for purposes of effecting ways and means of smooth and efficient communication between the condominium association and its members and the Declarant or the Association, the Association shall be entitled to communicate and deal with the condominium association in all matters affecting the owners of condominium units within the Unit. After the date of the recording of the declaration of condominium, the president of said condominium association, or such other individual as the condominium association may designate in writing to the Association, shall act as the representative of the condominium association as the Owner of the Unit in matters requiring a vote of the members and shall be entitled to cast all the votes attributable to the Unit.

Article III Association Membership and Voting Rights

3.1 Membership. Every Person who is the record owner of a fee or undivided fee interest in any Unit that is subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate an Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Unit. Membership shall be appurtenant to and may not be separated from ownership of a Unit. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by any authorized representative of a Member.

3.2 Voting. In any matter coming before the Members for a vote, Members shall be entitled to cast one equal vote for each Unit owned. When more than one Person holds an ownership interest in any Unit, the vote for such Unit shall be exercised as those Owners determine among themselves. In the event of a dispute, the Members right to vote shall be suspended if more than one Person seeks to exercise it. The Board of Directors may suspend the

voting rights of an Owner for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, rules and regulations.

3.3 Notice of Sale or Acquisition. Owners must keep the Association apprised of their name, address and telephone number. Accordingly, prior to the sale of a Unit, the Owner shall provide the Association with written notice of the name of the purchaser and the date, time and place of the closing. Upon acquisition of a Unit, each new Owner shall provide the Association with written notice of the name, mailing address and telephone number of the Owner and the names of the Occupants of the Unit. All Owners shall notify the Association of any change in name, address or telephone number.

3.4 Powers of Association Relating to Condominium Association. The Association may veto any action taken or contemplated by a Condominium Association which the Board of Directors reasonably determines to be adverse to the interest of the Association or its members or inconsistent with this Declaration. The Association also may require specific action to be taken by a Condominium Association to fulfill its obligations under this Declaration, the Bylaws or rules and regulations. By way of explanation and not limitation, the Association may require that specific maintenance or repairs or aesthetic changes be performed by the Condominium Association in order to maintain the standard of maintenance or aesthetics generally prevailing in Development, as the same is more particularly determined by the Board of Directors. If the Condominium Association fails to comply with such requirements within a reasonable period of time as specified in writing Condominium Association, the Association may perform such maintenance, repairs, aesthetic changes or other actions required thereby and assess the costs to the Owners of Units in such Condominium as a specific assessment as provided herein.

Article IV Assessments

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

4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments; (b) special assessments; and (c) specific assessments. All such assessments, together with late charges, interest at twelve percent (12%) per annum on the principal amount due and costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and shall be a continuing lien in favor of the Association on the Unit against which each assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each such assessment, together with such late charges, interest and costs of collection, shall also be the personal obligation of the Person who was the Owner of the Unit

at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Unit, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance. No Owner may waive or otherwise exempt such Owner from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Unit. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs of collection, then to late charges, then to interest and then to delinquent assessments.

4.3 Annual Assessments. It shall be the duty of the Board of Directors to prepare a budget covering the estimated costs of operating the Association during the coming year. The Board of Directors may, but is not required to, prepare a capital budget with a separate capital contribution or reserve to meet the future capital needs of the Association. During the period that the Declarant has the right to appoint the officers and directors of the Association, no separate capital budget, capital contribution or reserve shall be required. The Board of Directors shall cause the budget and the annual assessments to be levied against each Unit for the following period to be delivered to each Member at least thirty (30) days prior to the due date of any annual assessment. The Board may deliver a copy of the budget to the president of the Condominium Association and require that the portion thereof applicable to the Condominium Units be included in the Condominium Association's budget. The budget and the annual assessment shall become effective unless (i) disapproved at a meeting by a majority of the Total Association Vote and the Declarant; or (ii) disapproved by the Declarant acting alone. The Board of Directors shall not be obligated to call a meeting for consideration of the budget unless requested to do so by the number of Members and in the manner provided in the Bylaws for calling a special meeting. Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board of Directors fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue for the succeeding year. Notwithstanding anything to the contrary herein, the portion of the Association budget attributable to amounts levied pursuant to the Easement and Cost Sharing Agreement may be disapproved only as provided for in the Easement and Cost Sharing Agreement. The annual assessment shall be levied on all Units on a pro rata basis based on the estimated gross heated square footage of each Unit and determined by dividing the estimated gross heated square footage of a particular Unit by the estimated gross heated square footage of all Units within the Development by the estimated gross heated square footage of all Units within the Condominium, each as determined in the reasonable discretion of the Board. The annual assessment shall be paid in such manner and on such dates as may be fixed by the Board of Directors from time to time. When a Unit is annexed to the Development, the amount of the first annual assessment for a Unit that has been annexed shall be prorated based upon the number of days remaining in the fiscal year at the time the Unit is subjected to this Declaration. Unless otherwise provided by the Board of Directors, the annual assessment shall be paid in one annual installment. The annual assessment includes any sums the Board of Directors determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of such reserve funds, if any, as the Board of Directors shall deem proper. The

annual assessment may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance, expenses and liabilities incurred as provided in the Easement and Cost Sharing Agreement, and expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in and about the enforcement of any and all rights and duties of the Association.

4.4 Special Assessments. The Association may levy a special assessment if approved by Members holding at least a majority of the Total Association Vote and the Declarant. A special assessment shall be paid as determined by the Board of Directors and shall be allocated among Units in the same manner as the annual assessment. The Board of Directors may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

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

(a) Expenses of the Association which benefit less than all of the Units or which do not provide an equal benefit to all Units may be specifically assessed equitably among all of the Units which are benefited according to the benefit received.

(b) Expenses of the Association occasioned by the conduct of less than all of those entitled to occupy all of the Units, or by the Occupant(s), licensees or invitees of any such Unit(s), may be specifically assessed against such Unit(s).

(c) Expenses of the Association incurred for services or items provided to Owners upon request therefor or which provide a proportionate or uniform benefit to the Units, including, but not limited to, uniform charges associated with use and rental of sign panels on any "Monument Sign" (as defined hereinbelow), may be specifically assessed equally among all of the Units which are benefited according to the benefit received.

4.6 Subordination of Liens to Mortgages. The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage placed on a Unit if, but only if, all such assessments and charges with respect to such Unit authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the foreclosure of such Mortgage. Such subordination is merely a subordination and shall not relieve the Owner of

the Unit of its personal obligation to pay all assessments coming due at any time when it is the Owner of such Unit; shall not relieve such Unit from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure); and no sale or transfer of such Unit to the Mortgagee or to any other Person pursuant to a foreclosure, shall relieve any existing or previous Owner of such Unit of any personal obligation or relieve such Unit or the then Owner of such Unit from liability for any assessment authorized hereunder which becomes due after such sale and transfer.

4.7 Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than fifteen (15) days shall incur a late charge (in an amount determined by the Board of Directors from time to time but not to exceed the greater of Fifteen and No/100 Dollars (\$15.00) or fifteen percent (15%) of the amount due), and interest at twelve percent (12%) per annum on the principal amount due and costs of collection, including, without limitation, reasonable attorneys' fees actually incurred. As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of assessments and fees arising hereunder shall include costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and the award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2). The Association may cause a notice of delinquency to be given to any Owner who has not paid within fifteen (15) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts (including, without limitation, late charges and costs of collection and enforcement of payment, including reasonable attorney's fees actually incurred) and/or to foreclose its lien (which shall include, without limitation, late charges and costs of collection, including reasonable attorney's fees actually incurred). The Association may file notice of a lien with the Office of the Clerk of Superior Court of Cherokee County, Georgia, but no such notice of lien shall be required to establish or perfect the lien for unpaid assessments. Each Owner, by acceptance of a deed vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on any property in the Development at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner(s), including the right to vote, the right of enjoyment in and to the Common Property and the right to receive and enjoy such services and other benefits as may then be provided by the Association, if any, including without limitation, suspension of utility services provided by the Association, until all assessments, costs and re-connection charges are paid in full, subject to any notice requirements as may be required by the institutional providers providing such utilities or services to Units.

Any suspension shall not affect such Owner's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such property in favor of the Association.

4.8 Collection of Assessments by Condominium Association. The Board of Directors may require that a Condominium Association collect the general annual assessment or any special assessment due to the Association from the Condominium Unit Owners and pay all such assessments to the Association prior to the due date thereof. If so directed by the Board of Directors, the Condominium Association shall pay the annual assessment or special assessment or any installment thereof, as the case may be, to the Association for all Units in the Condominium in full on or before the due date thereof. In the event that a member of a Condominium Association fails to pay all or a portion of the assessments required under the Condominium Declaration, including, without limitation, all or any portion of the annual assessment or special assessment provided herein, the total amount of any such assessments applicable to the Condominium Units shall nevertheless be due and payable in full by the Condominium Association to the Association. All costs of collection incurred by the Condominium Association to collect amounts due under this Declaration shall be borne by such Condominium Association to the extent not collected from the defaulting Unit Owner.

4.9 Date of Commencement of Assessments. Assessments shall commence in general when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a Unit on the date that such Unit has been improved with a commercial building and has been conveyed to an Owner other than Declarant, a successor Declarant or an affiliate of either who intends to occupy the Unit, or, if the Unit is occupied before such conveyance, the date of such occupancy.

4.10 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint and remove the directors and officers of the Association, Declarant may, but shall have no obligation to: (a) advance funds or contributions of services or materials or a combination of services and materials, rather than money (herein collectively called an "in kind contribution"), or a combination of these, to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the general, Neighborhood, special and specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Development; provided, however, no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan unless approved by Owners as provided in this Declaration.

4.11 Estoppel Letter. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association or its managing agent setting forth the amount of assessments past due and unpaid, including any late charges, interest, fines, or other charges against that Unit. Such request shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. The Association

shall, within five (5) business days after receiving a written request therefor, certify to the amount of any unpaid assessments constituting a lien on a specified Unit. The Association may charge a reasonable fee as may be permitted by law as a prerequisite to the issuance of such statement. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Unit shall be binding upon the Association. It is the intent of this provision to comply with O.C.G.A. Section 44-14-15(c), as amended.

4.12 Utility Charges. The Development may be served by one or more master utility meters. The Association or its designee shall be responsible for the administration of expenses associated with any master utility meter(s) serving the Development. The Association shall pay all usage charges for any utility supplied to the Development or any portion thereof through a master utility meter. In the event a Unit is served by a sub-meter which allows the Association to determine the usage or a particular utility attributable to a particular Unit, the Board of Directors may specifically assess such Unit for its share of such usage as a specific assessment as provided herein; provided, however, at the discretion of the Board of Directors, the Association may require each Owner to install separate utility meters for each Unit at the Owner's cost, or may install such meters and assess the costs thereof against each Unit as a specific assessment, and all charges for utility usage may be assessed to each Unit for its share as a specific assessment accordingly. The Association shall read, or hire a third-party to read, the sub-meter serving a Unit, if any. The special assessment for utility usage for each Unit shall be determined by the Board of Directors and may be based on the actual amount of such utility used and supplied to each Unit or may be calculated by using estimates based on averages or other techniques, and may include expenses incurred by the Association and/or a reasonable administrative charge associated with the reading of each Unit's sub-meter; so long as the same method is used for each similarly situated Unit. In the event a Unit is not served by a sub-meter and/or a utility service provided to the Development is not otherwise metered, for example, without limitation, a fixed fee billing arrangement for maintenance, operation and use of exterior lighting fixtures, the expenses associated with such utility usage in the Development may be assessed as part of the annual assessment or as part of a specific assessment and allocated equitably among all of the Units or calculated by using estimates based on averages or other techniques, as may be appropriate; so long as the same method is used for each similarly situated Unit.

4.13 Capitalization of Association. Upon each and every transfer or conveyance of title to a Unit, other than a transfer or conveyance to Declarant, an affiliate of Declarant or a builder with the consent of Declarant, a working capital contribution, in an amount determined by resolution of the Board of Directors from time to time, shall be collected from the new Owner at the closing of such transaction and disbursed to the Association; or if not collected at closing, shall be paid immediately upon demand to the Association. The amount of the working capital contribution payable for a given Unit may be set proportionally based on the liability for common expenses attributable to said Unit. The working capital contribution shall constitute a specific assessment against the Unit, shall be in addition to, not in lieu of, the general assessment and shall not be considered an advance payment of such assessment. The working capital contribution may be used by the Association for any purpose which provides a direct benefit to the Development, including, without limitation, for the payment of operating expenses of the

Association or other expenses incurred by the Association pursuant to the provisions of this Declaration.

Article V

Maintenance; Conveyance of Common Property to Association

5.1 Association's Maintenance Responsibility. To the extent not otherwise maintained by a third-party in accordance with the Easement and Cost Sharing Agreement or a Condominium Declaration, the Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, (whether or not constituting Common Property) the following, as determined by the Board of Directors: (a) all entry features for the Development, if any; (b) landscaping on the exterior portions of the Development; (c) any irrigation system and the expenses for water and electricity, if any, provided to all entry features and Development landscaping; (d) all storm water drainage facilities and storm water detention/retention pond(s) located in or serving the Development, if and to the extent such improvements, facilities or pond(s) are not maintained by a public entity or the owners of neighboring property benefited by such facilities; provided however, each Owner of a Unit, and not the Association, shall be responsible for the maintenance, repair and replacement of all storm water drainage facilities which exclusively serve such Unit; (e) Development street signs, parking lot signs and street lights; (f) all private Development sidewalks; (g) disposal of trash and garbage and/or for recycling of recyclable and/or reusable materials as provided in Section 5.6 hereof; and (h) regular pest control within and around the Units, including, without limitation, extermination of insects, pests, and vermin on a schedule determined by the Board of Directors of the Association.

The Board of Directors may authorize the officers of the Association to enter into contracts with any Person or Persons to perform maintenance hereunder on behalf of the Association. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Development and/or to enter into easements and cost sharing agreements regarding any property where the Board has determined that such action would benefit owners. In the event that the Association determines that the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or an Owner's Occupant or their respective guests, lessees or invitees, then the Association may perform such maintenance, repair or replacement and all costs thereof may be assessed against the Owner's Unit as a specific assessment.

5.2 Owner's Maintenance Responsibility. Except for maintenance performed on a Unit by the Association pursuant to Section 5.1, if any, or as may otherwise be provided in a Condominium Declaration, if any, all maintenance of the Unit and all structures and other improvements thereon shall be the sole responsibility of the Owner, who shall maintain such Unit in good condition and repair. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; keeping improvements and exterior lighting in good repair and working order; maintenance, repair and replacement of all storm water drainage facilities which are located on and/or exclusively serve such Unit; complying with all governmental health and police requirements; repair of exterior damage to

improvements; and maintenance, repair and replacement of any pipe, wire, conduit, and other apparatus which serves only the Unit, regardless of whether said pipe, wire, conduit, and other apparatus is located within or outside of a Unit's boundaries. In the event that the Board of Directors determines that any Owner has failed to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-(10)-day period, to commence such work which shall be completed within a reasonable time. If any Owner does not then comply, the Association may provide any such maintenance, repair or replacement and all costs shall be assessed against the Owner and the Unit as a specific assessment.

5.3 Conveyance of Common Property to Association. Declarant or the owner of the property with the consent of Declarant may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and maintained by the Association for the benefit of its Members. So long as Declarant owns any property primarily for development and/or sale in the Development or has the right unilaterally to annex additional property to the Declaration, Declarant may, upon written notice to the Association, require the Association to reconvey to Declarant all or any portion of the Common Property, improved or unimproved, at no charge to Declarant, without a vote of the Members of the Association, if all or a portion of the Common Property is: (a) found by Declarant to have been conveyed in error; (b) needed by Declarant to make adjustments in property boundary lines; or (c) needed by Declarant due to changes in the overall scheme of development for the Development. The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept on behalf of the Association any such conveyance to the Association and to execute on behalf of the Association any and all documents, including, without limitation, deeds, necessary or convenient to effectuate and document any such conveyance to the Association. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise. The Declarant or such other owner of the property with the consent of Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether such property has been made available for the use of Owners. Unless otherwise set forth in the instrument of conveyance, the Declarant makes no warranty, express or implied, of any kind or any nature whatsoever, with respect to any such property, and all such warranties are hereby disclaimed. Without limiting the generality of the foregoing, Declarant makes, and shall make, no express or implied warranty of suitability or fitness of any of the property for any purpose, or as to the merchantability, title, value, quality, condition or salability of any of such property. The conveyance of such property shall be "AS IS" and "WHERE IS." The Declarant or the owner of the property with the approval of

Declarant may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant or such other owner may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Development. Neither the recordation of the subdivision plat(s) for the Development nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or another owner to the Association or the Owners, as the case may be, by an instrument recorded in the Office of the Clerk of Superior Court of Cherokee County, Georgia.

5.4 Party Walls. Except as may be otherwise provided in a Condominium Declaration, each wall built as a part of the original construction of the Units which shall serve and separate any two (2) adjoining Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, 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 shall be shared by the Owners who make use of the wall in equal proportions. If a party wall is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall may restore it, and the other Owner who is benefited by the wall 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.

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

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

5.6 Waste Removal. The Board of Directors may, with the consent of Declarant,

designate one or more locations within the Development to be centralized collection points for disposal of trash and garbage and/or for recycling of recyclable and/or reusable materials, for use by the Owners and Occupants within the entire Development or for a portion thereof, including, for instance, the Owners and Occupants of Units in a single building. The Association shall have the right, but not the obligation, to designate one or more private companies for removal of trash and/or recycling for the entire Development or for a portion thereof. Notwithstanding the foregoing, the Association reserves the right, but is not under the obligation, to contract with one or more private companies for removal of trash and/or recycling for the benefit of all Owners and Occupants within the Development or a portion thereof and include a fee for such service as part of an assessment pursuant to this Declaration. While the removal of normal business-related trash will be covered by any such contract, additional charges may be incurred for the removal of used appliances or other large items or specialty items, such as grease. Any such additional charges incurred by the Association may be specifically assessed against the applicable Unit as provided herein. If an Owner or Occupant, for any reason, refuses trash collection and recycling service provided by the Association, such Owner shall nevertheless still be obligated to pay the full amount of the general assessment.

Article VI
Architectural Standards

6.1 General. No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling, construction of impervious surface, building, exterior alteration of existing improvements, change in the exterior color of any existing improvement and planting and removal of landscaping materials), shall be commenced or placed upon any part of the Development, unless installed by the Declarant or approved in accordance with this Article, or otherwise expressly permitted in this Declaration. Plans and specifications approved in writing by the Declarant pursuant to a contractual obligation between the Declarant and an Owner shall be deemed approved plans and specifications for purposes of this Article. Any Owner may make changes to the interior of structures on the Unit without approval. However, modifications to the portions of a structure visible from outside the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Property by or on behalf of the Association. This Article may not be amended without the Declarant's written consent.

6.2 Guidelines and Procedures. Except as provided above, no exterior construction, addition or alteration shall be made unless and until plans and specifications shall have been submitted in writing to and approved in writing by the Declarant. Such plans and specifications shall be submitted in duplicate and shall contain sufficient detail to allow the Declarant to make its review and shall show the nature, kind, shape, height, materials and location of the proposed improvement. The Declarant may adopt written design and development guidelines and application and review procedures, which may provide for a review fee. The Declarant shall have sole and full authority to prepare and to amend, from time to time at its sole discretion and without notice, the architectural guidelines. The Declarant shall make the architectural guidelines

available to Owners who seek to engage in construction upon all or any portion of the Development and such Owners shall conduct their operations strictly in accordance therewith. If the Declarant fails to approve or to disapprove submitted plans and specifications in writing within forty-five (45) days after receipt of duplicate copies of all required items, including, without limitation, plans and specifications and payment of any review fee, such approval shall be deemed to have been given. As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration. Further, any such maintenance, repair or replacement to and on any improvement, change, modification, addition or alteration shall be completed in a timely manner with each work area maintained in a commercially reasonable clean manner with debris removed on at least a daily basis. In the discretion of the Declarant, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Declarant shall be the sole arbiter of such plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. The Declarant and its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Development to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such entry. If construction does not commence on a project for which plans have been approved within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the Declarant for reconsideration.

6.3 Limitation of Liability. Plans and specifications are not approved for engineering or structural design or quality of materials and by approving such plans and specifications the Declarant assumes no liability or responsibility therefor or for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, nor the officers, directors, members, employees and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans and specifications and every Owner agrees that such Person or Owner will not bring any action or suit against Declarant, the Association or the officers, directors, members, employees and agents of any of them to recover any damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

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

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

6.6 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant, Owners shall, at their own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Unit as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the architectural guidelines may be excluded by the Declarant from the Development, subject to any applicable notice and hearing procedures contained in the Bylaws. In such event, neither the Declarant, the Association nor the officers, directors, members, employees and agents of any of them shall be held liable to any Person for exercising the rights granted by this paragraph. In addition to any other remedies available to the Declarant, in the event of noncompliance with this Article, the Declarant may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the Declarant shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

6.7 Architectural Review by Board of Directors. Until the rights of Declarant terminate under this Declaration as hereinafter provided, the Declarant shall have the sole right, power and authority under this Article. There shall be no surrender of this right except in a written instrument in recordable form executed by Declarant and recorded in the land records of Cherokee County, Georgia. Upon expiration or earlier surrender in writing of all or a portion of such right and authority, the Board of Directors shall then have such jurisdiction, power and authority over architectural control under this Article as may have been relinquished by the Declarant. The Declarant may in its sole discretion relinquish architectural control as to certain types of improvements or modifications to the Board of Directors while retaining control over all other building and construction in the Development. For example and without limitation, the Declarant may relinquish control over modifications of existing structures to the Board of Directors while retaining all authority to review and approve new construction. Any right, power or authority of the Declarant which may be relinquished to the Association prior to the termination of the rights of Declarant hereunder shall be by written instrument only and no such

right, power or authority shall be relinquished by implication or otherwise. After the termination of all rights of Declarant hereunder, the Board of Directors shall have all right, power and authority to review and approve building and construction activity within the Development hereunder and this Article shall then be read and interpreted as if any reference to the Declarant or the authority of or action by the Declarant in this Article 6 were a like reference to the Board of Directors.

Article VII Use Restrictions and Rules

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

7.2 Permitted Uses.

(a) General. All portions of a Unit shall be used for only for office, professional, business or retail sales purposes and activities typically incidental thereto and permitted by applicable law, including any zoning ordinances and regulations applicable to the Development, and otherwise pursuant to this Declaration, so long as any such activity is ancillary to the primary use of the Unit; provided, however, in no event shall a Unit be used as a full service restaurant containing facilities for on-site cooking of food or food preparation, serve or sell alcoholic beverages, or for other food and/or beverage service or production uses. Notwithstanding the foregoing, a bakery, coffee shop, sandwich shop or similar establishment may be permitted provided such bakery, coffee shop, sandwich shop or similar establishment does not prepare or cook food on-site. There shall be no residential use of a Unit.

(b) Additional Uses; Rules and Regulations. Subject to any applicable zoning ordinances and to subsection (c) herein below, allowable commercial use shall include, without limitation, the use of property for governmental, professional, office, commercial condominium, business, bank and financial institution and medical office purposes. The Board of Directors with the consent of Declarant may, but has no obligation to, permit any additional commercial and/or business use consistent with the overall scheme of development for the Development and may, with the consent of Declarant, further establish rules and/or adopt resolutions regarding permitted commercial uses which may be located within the Development from time to time. Notwithstanding anything to the contrary stated herein, use of a Unit shall not constitute a public or private nuisance or hazardous or offensive use or threaten the security or safety of other Owners or Occupants of the Development, as may be determined in the reasonable discretion of the Board of Directors. Any facilities and related activities authorized hereunder, including the exterior and interior of all improvements and all other items located within the Unit, shall be operated and maintained in a first-class manner. In the event that any use leads to an increase in fire or other insurance premiums on policies maintained by or on behalf of the Association, the Owner of the Unit causing such increase shall be assessed the cost of such increase, which

assessment may be collected in the manner provided for the collection of other assessments. A Unit may not be open for business to the public for retail sales between the hours of 10:00 p.m. and 6:00 a.m.

(c) Other Prohibited Uses. In addition to uses which are inconsistent with zoning conditions, ordinances and regulations applicable to the Development or otherwise prohibited pursuant to this Declaration, except as may otherwise be approved in writing by Declarant from time to time, the following uses and activities are prohibited within the Development:

- (i) cinema, movie theater or live performance theater;
- (ii) bowling alley or skating rink;
- (iii) video game room, amusement gallery, amusement arcade, or pool or billiards hall;
- (iv) massage parlor (provided, however, that massage facilities in first class health clubs, first class spas and the like are permitted with the prior written consent of the Declarant) or facility that hosts obscene, nude or semi-nude live performances;
- (v) establishment where obscene, pornographic or "adult" materials or paraphernalia, including, but not limited to, movies, videotapes, DVDs, devices, novelties, books, magazines, or other related items are sold, rented or displayed, provided that book stores, video stores and general merchandise stores that do not primarily engage in the foregoing activities shall not be prohibited;
- (vi) facilities used for the sale, display or advertisement of any paraphernalia used in the preparation or consumption of controlled substances, provided that pharmacies licensed by the State of Georgia shall not be prohibited;
- (vii) mortuary, funeral home or store selling caskets;
- (viii) industrial or manufacturing uses;
- (ix) on-site automotive supplies and parts sales;
- (x) central laundry, dry cleaning plant, or laundromat (except this prohibition shall not include any dry cleaning service or laundry only providing for pick-up and drop-off and not performing any such cleaning on premises);
- (xi) nightclub, ballroom, dance hall, discotheque, dance school, dance instruction facilities;
- (xii) "dollar" store, auction, liquidation, going out of business, fire or bankruptcy shops;

- (xiii) recruiting office or employment agency;
- (xiv) motor vehicle sales that include on-site vehicles or facility that performs motor vehicle repairs or related services;
- (xv) high volume insurance claim office; provided, however, an independent agent processing claims on an incidental basis may be permitted with the prior written consent of the Declarant;
- (xvi) betting or other gaming establishment, facility or operation, including, but not limited to, off-track or sports betting parlor, table games such as black-jack or poker, slot machines, video poker/black-jack/keno machines or similar devices (this prohibition shall not apply to charitable gambling activities so long as such governmental and/or charitable activities are incidental (i.e., less than ten percent (10%) of gross sales) to a permitted business operation being conducted in the Unit);
- (xvii) adult substance abuse clinic;
- (xviii) dialysis clinic;
- (xix) thrift store, pawn shop, liquidation outlet, flea market, or similar establishments, provided that "up-scale" consignment shops shall not be prohibited;
- (xx) check cashing/pay day loan establishment;
- (xxi) bail bondsman;
- (xxii) apartment/home rental service;
- (xxiii) gun or firearms dealer;
- (xxiv) tattoo or body piercing shop;
- (xxv) medical or health clinic, including any out-patient medical facility;
- (xxvi) pet store, veterinary clinic, animal boarding facility, animal disposal facility or any other facility dealing with animals;
- (xxvii) store that derives a significant portion of its sales from selling tobacco or tobacco-related products (including e-cigarettes using liquid nicotine or "vape" products), including, but not limited to, a cigar lounge or cigar shop;
- (xxviii) auditorium, meeting hall, church, or other house of worship (except this prohibition shall not include conference rooms only incidental to an otherwise permitted operation).

Rec: \$25.00

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

ParticipantIDs: 1358594985 SubmitterID: 7067927936

7.3 Signs. No signs, advertising posters or billboards of any kind shall be erected, displayed, placed, or permitted to remain on the Development without the prior written approval pursuant to Article 6 hereof, with the exception of the following: (a) one professionally lettered sign identifying the business of the Owner or Occupant may be installed proximate to the main entry door of the Unit subject to approval of the style, size, type, color, material and location of said sign in accordance with the provisions of Article 6 hereof or otherwise in compliance with applicable architectural guidelines; and (b) such signs as may be required by legal proceedings. The Declarant or the Board, as the case may be, shall have the right to enact reasonable rules and regulations pursuant to Article 6 hereof governing the general placement and installation of signs within the Development, including, without limitation, rules and regulations concerning the style, size, type, color, material, location, or any combination thereof of signs. Any installed sign shall be maintained by the Owner of the Unit to which the sign appertains, at its sole cost and expense.

Declarant or the Association may, but shall have no obligation to, erect or provide one or more monument signs or other signage facility or design in a location reasonably acceptable to Declarant or the Association, as the case may be, within or in proximity to the Development (the "Monument Sign") for use identifying one or more businesses operating within the Development or otherwise identifying one or more Units. Declarant or, after expiration of Declarant's rights hereunder, the Board may assign one or more portions of any such Monument Sign or may lease one or more portions of any such Monument Sign to an Owner for installation of a sign thereon. Any such signage shall be subject to approval of the Declarant or the Association, as the case may be, with respect to style, size, type, color, material, location, or any combination thereof. No sign(s) shall be placed on such Monument Sign except with the prior consent of Declarant or, after expiration of Declarant's rights hereunder, the Board and otherwise in accordance with the terms of this Section. The Association shall be responsible for maintenance of the Monument Sign as the Board determines, in its sole discretion, is appropriate; provided, however, nothing herein shall obligate the Association to maintain a sign installed by or on behalf of an Owner as provided herein. Declarant or the Association, as the case may be, may remove the Monument Sign and/or terminate designation and use of such area entirely at any time, and no property rights therein of any kind are created hereby.

The Board or Declarant may impose a fine of up to One-Hundred and Fifty and No/100 Dollars (\$150.00) per day for display of any sign in violation of this provision which is not removed within twenty-four (24) hours after written demand is delivered to the Owner at that Unit. The provisions of this Section shall not apply to signs erected by or on behalf of the Association, the Declarant or any Mortgagee in possession.

7.4 Vehicles; Parking. Vehicles shall be parked only in appropriate parking areas serving the Unit or other areas designated by the Board from time to time, if any. The term "parking areas serving the Unit" shall refer to Reserved Parking Area(s) (as that term is defined below) of the Units, if any, and such other parking space(s) as may be designated by the Board of Directors from time to time, if any. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. All parking shall be subject to such reasonable rules and regulations as the Board may adopt from time to time, including, without limitation,

rules limiting the number of vehicles which may be parked at the Development and/or rules designating certain parking spaces and or parking areas for the exclusive use by the guests, customers or other invitees of Owners and Occupants. Subject to reasonable rules and regulations of the Association, any parking spaces in the Development not otherwise designated as all or a portion of a Reserved Parking Area may be used by the guests, customers or other invitees of Owners and Occupants on a first come, first served basis. Declarant or the Board may, but shall not be obligated to, designate, move and redesignate additional guest parking areas on the Common Property and show the same on a recorded plat for the Development or a Supplementary Declaration or identify the same as such on the parking spaces themselves ("Reserved Parking Areas") for temporary parking by the Owners and Occupants of one or more Units and/or their respective guests, customers or other invitees. All parking in the Development, including parking in Reserved Parking Areas, shall be subject to the provisions of this Section and such additional rules and regulations as the Board of Directors may adopt from time to time.

Disabled and/or stored vehicles are prohibited from being parked on the Development. For purposes hereof, a vehicle shall be considered "disabled" if it does not have a current license tag or if it is in a condition such that it is incapable of being operated upon the public highways. A vehicle shall be considered "stored" if it remains on the Development for forty-eight (48) consecutive hours or longer without prior written Board permission. The intent of the foregoing provisions is that the temporary removal of such vehicle from the Development to break the continuity of the forty-eight (48) consecutive hours, as applicable, shall not be sufficient to establish compliance with these restrictions.

No towed vehicle, boat, personal water craft, recreational vehicle, motor home, trailer, minibike, go cart, golf cart, commercial vehicle, camper, bus, mobile home, panel truck, truck with a load capacity of one (1) ton or more, or van (excluding mini-vans or utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles) shall be parked on the Development except in areas designated by the Board as parking areas for such particular type of vehicle, if any. Notwithstanding the above, trucks, vans, and commercial vehicles shall be allowed temporarily on the Common Property during normal business hours for the purpose of serving any Unit or the Common Property, but no such vehicle shall remain on the Common Property overnight or for any purpose, except serving a Unit or the Common Property, without prior written Board consent. The term "commercial vehicles" as used herein, shall include, without limitation, any vehicle which bears any indicia of commercial use, including but not limited to writing, logos, ladders, ladder racks, signage of a commercial or business nature, tool boxes or other service or delivery equipment on or visible from the vehicle, or vehicles which would not be primarily used for the transportation of passengers.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's parking space(s), is parked in or is blocking Reserved Parking Area which has been designated as exclusively serving another Unit, is obstructing the flow of traffic, is parked on any sidewalk, grassy or landscaped area, or otherwise creates a hazardous condition, or is otherwise parked on any portion of the Development in violation of this Declaration or in violation of the Association's rules and regulations, the Board or agent of the Association may cause the vehicle

to be towed or booted, subject to compliance with applicable law, including any notice required thereby. The notice may be a general notice by signage or may be placed on the vehicle, if and as allowed under applicable law, as the case may be. If a vehicle is towed or booted in accordance with this provision, neither the Association nor any director, officer, employee or agent of the Association shall be liable to any person for any claim of damage resulting from the towing or booting activity. Notwithstanding anything to the contrary herein, the Board of Directors may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot the violating vehicle

7.5 Animals and Pets. No animals, birds, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Unit, except that the Board of Directors may, in its discretion and with the prior consent of Declarant, allow veterinarian clinics, animal hospitals, research laboratories and similar facilities as may be authorized by applicable zoning ordinances. No exterior pens for animals, aviaries, barns, sheds or other structures shall be erected or maintained on the Development without the prior written approval of the ACC.

7.6 Nuisance. Without the prior written consent of the Board of Directors, nothing shall be done or kept on or upon the Development which would increase the cost of insurance maintained by the Association, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body, or which would increase the Association's common expenses. Noxious, destructive or offensive activities shall not be carried on or upon the Development. No Owner may use or allow the use of the Unit or any portion of the Development at any time, in any way or for any purpose which may endanger the health, unreasonably annoy or disturb or cause embarrassment, or discomfort to other Owners, or constitute, in the sole opinion of the Board of Directors, a nuisance. No damage to or waste of the Common Property or of common services paid for as a Common Expense shall be permitted by any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner such Owner's, Occupants or their respective invitees or licensees.

It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on the Development. No property within the Development shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. It shall be the responsibility of each Owner and Occupant to prevent its invitees or licensees, including without limitation, any customers, employees, licensees and invitees, from loitering in or on any of the Common Property. No plants, animals, device or thing of any sort shall be maintained in the Development whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Development by other Owners and Occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, screaming, shouting, excessively loud talking, fighting, raucous behavior,

insobriety, playing loud music or television, use of any alarm, equipment, or device, mechanical or otherwise which creates or produces excessively loud sounds or any vibrations, or any conduct which creates any noxious or offensive odors shall be permitted, located, used or placed on any Unit or any portion thereof. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board.

No Owner, Occupant or agent of such Owner or Occupant shall do any work which, in the reasonable opinion of the Board, would jeopardize the soundness or safety all or any portion of the Development or any structure thereon, would reduce the value thereof, or would impair any easement or other interest in real property thereto, without in every such case the unanimous, prior written consent of all Members of the Association and their Mortgagees.

All Owners and Occupants acknowledge and understand that Declarant and others under Declarant's direction or consent may be constructing certain portions of the Development and adjacent areas that are not part of the Development and no such construction or noise associated therewith shall be deemed a nuisance or discomfort pursuant to the terms hereof.

7.7 Antennas. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be secured on a roof, placed, allowed or maintained upon any portion of the Development, including any Unit, unless approved in accordance with the provisions of Article 6 hereof; provided, however, no such approval shall be necessary to install the following within a Unit: (1) antennae designed to receive direct broadcast satellite services, including direct-to-home satellite services, that are one meter or less in diameter; (2) antennae designed to receive video programming services via multi-point distribution services that are one meter or less in diameter or diagonal measurement; or (3) antennae that are designed and intended to receive television broadcast signals. Any permitted antennae and the wiring associated therewith shall be located or screened so as to be concealed from the view of neighboring streets and property, unless an acceptable quality signal cannot otherwise be obtained, in which case such permitted antennae and associated wiring shall be painted so as to reduce visibility thereof as determined in the discretion of the Board.

7.8 Mechanical Equipment, Garbage Cans, Trash Containers, Tanks, Etc. All mechanical equipment servicing buildings, above-ground tanks and other similar items, storage facilities, garbage cans, and trash and recycling containers shall be located or screened so as to be concealed from the view of neighboring streets and property, unless otherwise approved in accordance with the provisions of Article 6 hereof. All rubbish, trash, garbage and recycling material shall be regularly removed from the Units and shall not be allowed to accumulate therein. No rubbish, trash, garbage or recycling material shall be placed on the Common Property, temporarily or otherwise, except in appropriate designated receptacles or such other area(s) designated by the Board from time to time, if any. Rubbish, trash, and garbage shall be disposed of in sealed bags. Rubbish, trash, garbage and recycling material shall be either placed in the appropriate designated receptacles designed for collection and/or removal thereof from the Development or removed from the Development. The Board of Directors may, with the consent of Declarant, designate one or more locations within or adjacent to the Development to be centralized collection points for disposal of trash and garbage and/or for recycling of recyclable

and/or reusable materials, for use by the Owners and Occupants of all or any Unit, as the case may be. The Association shall have the right, but not the obligation, to designate one or more private companies for removal of trash and/or recycling for the entire Development or for a portion thereof. Notwithstanding the foregoing, the Association reserves the right, but is not under the obligation, to contract with one or more private companies for removal of trash and/or recycling for the benefit of all Owners and Occupants within the Development or a portion thereof and include a fee for such service as part of an annual or specific assessment. While the removal of customary business-related trash and/or recycling, as the case may be, may be covered by any such contract, additional charges may be incurred for the removal of used appliances or other large items or specialty items, such as grease. Any such additional charges incurred by the Association may be specifically assessed against the applicable Unit. All Development trash removal and recycling shall be subject to such further rules and regulations as the Board may adopt from time to time, including without limitation, the designation of a particular pick-up day throughout the entire or a portion of the Development and/or designated allowable pick-up times.

7.9 Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed nor shall any two (2) or more Units be combined. Declarant, however, hereby expressly reserves the right to subdivide and/or revise and re-record the subdivision plat or condominium documents applicable to any Unit(s) with the consent of the Owner of such Unit(s) and to approve the revision and re-recording of any plat or other documents applicable to any Unit(s) owned by any builder or developer, including, but not limited to, subdividing or combining Units or changing any Unit to Common Property or creating a public or private street over any Unit or property that was formerly a Unit, without the consent of any Person, other than the Owner(s) of such property; provided, however any assessments applicable to such Unit immediately prior to said subdivision or combination shall not be reduced and shall be equitably allocated among such subdivided or combined Unit(s).

7.10 Utility Lines. No overhead utility lines shall be permitted within the Development, except for temporary lines as required during construction without prior written approval in accordance with the provisions of Article 6 hereof.

7.11 Air-Conditioning Units. No window air conditioning units may be installed.

7.12 Lighting. Exterior lighting on any Unit shall not be permitted without prior written approval in accordance with the provisions of Article 6 hereof.

7.13 Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial exterior vegetation, sculptures, fountains or similar items may be installed or displayed on any Unit without prior written approval in accordance with the provisions of Article 6 hereof.

7.14 Flags. No flags may be displayed on any Unit without prior written approval in accordance with the provisions of Article 6 hereof; provided, however no such approval shall be required to display the flag of the United States of America and the current flag of the State of Georgia on a Unit in accordance with the provisions of the U.S. Flag Code (36 US Code 10) and usual and customary practice. The Board of Directors of the Association may promulgate

reasonable rules and regulations with respect to the display of flags in the Development, including, without limitation, regulating the size of flags that may be displayed. Notwithstanding anything to the contrary herein, no free-standing flag poles shall be permitted on a Unit without prior written approval in accordance with the provisions of Article 6 hereof.

7.15 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed without prior written approval in accordance with the provisions of Article 6 hereof.

7.16 Property Maintained by the Association. Entry features, street signs, street lights, drainage facilities, and landscaped areas adjacent to rights-of-way and any other property, equipment or thing maintained by or on behalf of the Association, regardless of whether or not located upon or within any Unit, shall not be altered, removed or additional improvements added thereto without prior written approval in accordance with the provisions of Article 6 hereof.

7.17 Compliance with Laws.

(a) General. Each Owner shall each be responsible for complying with and causing its invitees and licensees to comply with all laws, statutes, codes, rules, orders, decrees, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Georgia, County of Cherokee, and any other governmental entity or agency now or hereafter having jurisdiction over the Development or any portion thereof, if noncompliance by it with respect to its respective Unit or any part thereof would: (i) subject such Owner, the Association or any other Owner or Occupant to civil or criminal liability or (ii) jeopardize such Owner's or any other Owner's or Occupant's right to occupy or utilize beneficially its respective Unit or any part thereof or would result in the imposition of a lien against the Unit of the other Owner and/or any portion of the Development.

(b) Environmental.

(i) No Owner, lessee, tenant or other Occupant of a Unit or any portion thereof, shall handle, store, deposit, use, process, manufacture, dispose of or release or allow any of its agents, employees, contractors or invitees to handle, store, deposit, use, process, manufacture, dispose of or release any "Hazardous Substance" (as that term is defined below) of any kind from, on, in, under or in the air above any part of such Unit or any other portion of the Development, including, but not limited to, any surface waters or groundwater located thereon or into public sanitary sewer systems serving the Unit without complying with all "Environmental Laws" (as that term is defined below), including, but not limited to performing pre-treatment, obtaining permits and giving notices as required by Environmental Laws. "Hazardous Substances" shall mean those substances now or hereafter included within (whether as a result of such substance's inclusion on a list, physical characteristics or otherwise) any of the definitions of "hazardous substances", "hazardous waste", "hazardous materials", "pollutant", "contaminant" or "toxic substance" under or otherwise regulated by, any Environmental Laws; including, but not limited to (A) mixtures containing listed Hazardous Substances and waste generated from the treatment, storage or disposal of Hazardous Substances, (B) asbestos, (C) polychlorinated biphenyls, (D) radioactive materials and (E) petroleum (including crude oil or

any fraction thereof), natural gas, natural gas liquids, liquefied natural gas and synthetic gas. "Environmental Laws" shall mean and include all present and future federal, state or local laws, rules orders ordinances and regulations pertaining to environmental regulation or the use, processing, storage disposal, generation or transportation of Hazardous Substances or any contamination, cleanup or disclosure related thereto, including, but not limited to, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq. and such regulations as may be promulgated with respect thereto, including, but not limited to the regulations contained in 40 CFR Part 280. Notwithstanding the above, this prohibition shall not apply to the presence, use, or storage on the Development of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal retail and restaurant uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

(ii) Each Owner and Occupant of a Unit or portion thereof shall be responsible for and shall pay all costs and expenses related to the disposal or release by such Owner, lessee, tenant, Occupant or other user of such Unit of any Hazardous Substances, sewage or wastes of any kind in, on, under or in the air above such Unit or in any other portion of the Development, which costs and expenses shall include, but not be limited to, closure, removal, remediation, cleanup, containment and other response costs, injuries to persons, damages to property, legal expenses and interest paid to any governmental entity.

(iii) No Owner, lessee, tenant, or other Occupant of a Unit or any portion thereof, shall handle, store, deposit, use, process, manufacture, dispose of or release or allow any of its agents, employees, contractors or invitees to handle, store, deposit, use, process, manufacture, dispose of or release any explosives, or any flammable, odorous, noxious, corrosive, or pollutant materials or any other goods that would cause danger or nuisance to a Unit or any portion of the Development. Furthermore, storage areas located within a Unit or any building shall not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code, or health code.

(iv) The provisions of this subparagraph do not affect the rights, liabilities or obligations of any Person under Environmental Laws or other applicable laws, except as may otherwise be expressly provided herein.

(c) Owner's Indemnity. Each Owner (hereinafter referred to as the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless each other Owner, the Association, and Declarant (hereinafter referred to collectively as the "Indemnitee") from and against any and all actions or proceedings arising therefrom, by or on behalf of any Person, firm, corporation or governmental authority, other than the Indemnitee, arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's Unit or activities therein or arising out of the Indemnifying Owner's use, exercise or enjoyment of the easements and licenses granted hereunder and from and against all costs, reasonable attorney's fees actually incurred, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against the Indemnitee by reason of any such claim, Indemnifying Owner, upon notice from

Indemnatee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to Indemnatee. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnatee.

7.18 Traffic Regulations. All vehicular traffic on the private streets and parking areas in the Development shall be subject to the provisions of the state and local laws concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits and including modifications of those in force on public streets, within the Development. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of state and local laws and such rules and regulations promulgated by the Association, the rules and regulations of the Association shall govern. Only drivers properly licensed to operate motor vehicles on the public roads within the State of Georgia may operate any type of motor vehicle within the Development. All vehicles of any kind and nature which are operated on the streets or parking areas in the Development shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all Owners and Occupants.

7.19 Leasing.

(a) General. Units may be leased for commercial purposes allowed pursuant to this Declaration. Unless otherwise provided by the Board of Directors, all leases shall have a minimum term of at least twelve (12) months. All leases shall require, without limitation, that the Occupants acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions and rules and regulations of the Association.

(b) Notice. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other Persons occupying the Unit, the phone number of the lessee, the Owner's address and phone number other than at the Unit and other such information as the Board may reasonably require.

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

(i) Compliance with Declaration, Bylaws, and Rules and Regulations. Any lessee shall abide by and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure such compliance.

Every Owner agrees to cause all Occupants of his or her Unit to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto and is responsible for all violations caused by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. In the event that the lessee or a person living with the lessee violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the provisions contained in this Declaration and the Bylaws. If the fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee and/or Occupant(s) in accordance with Georgia law.

(ii) Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property.

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

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

(e) Exemption. This Section shall not apply to any leasing transaction entered into by the Declarant or affiliates thereof or an institutional holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage; provided, however, Declarant, any affiliate of Declarant, and the institutional holder of any first Mortgage on a Unit that leases a

Unit shall provide the Board with the name of the lessee and all other Persons occupying the Unit, the phone number of the lessee, and the Owner's address and phone number other than at the Unit as provided in this Section.

7.20 Deliveries. The Board of Directors may adopt reasonable rules and regulations regarding delivery of any supplies and/or materials to the Units, including without limitation, establishing one or more allowable timeframes for any such delivery, and regarding use of the streets, drives and parking areas serving the Development for such deliveries.

Article VIII Insurance and Casualty Losses

8.1 Insurance on Common Property. The Board of Directors shall obtain casualty insurance for all insurable improvements, whether or not located on the Common Property, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors 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, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). Policies may contain a reasonable deductible as determined by the Board of Directors.

In addition to the other insurance required by this Section, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or employee dishonesty coverage covering directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available at a reasonable cost. If obtained, the amount of fidelity or employee dishonesty coverage shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the policy is in force, or any lesser amount of fidelity coverage the Board may find reasonable. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse the Declarant for the cost thereof, provided the Declarant is able to obtain such insurance coverage on a competitive basis, and the Declarant shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon the Declarant and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by the Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board is unable to so comply because the Board has contracted for or otherwise arranged to obtain insurance coverage through the Declarant.

8.2 Individual Insurance. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Units and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry all-risk casualty insurance on all structures within such Owner's Unit and a liability policy covering damage or injury occurring on the Owner's property. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policies required hereunder shall be in effect at all times and a copy of such policies shall be furnished to the Association upon request. In the event that any Owner fails to obtain insurance as required by this Declaration, the Association may, but shall have no obligation to, purchase such insurance on behalf of the Owner and assess the cost thereof to the Owner(s) as a specific assessment.

8.3 Damage and Destruction -- Insured by Association. After damage or destruction by fire or other casualty to all or any portion of any improvements covered by insurance written in the name of the Association, the Association shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, a proposal not to repair or reconstruct such property is approved by at least two-thirds (2/3) of the Total Association Vote and Declarant. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against the Owner of each Unit. Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it should be determined by the Association and Declarant in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall be restored to its natural state and maintained as an undeveloped portion of the Development by the Association in a neat and attractive condition.

8.4 Damage and Destruction -- Units. Improvements on a Unit damaged by fire or other casualty shall be repaired or reconstructed in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 6 of this Declaration. The repair or reconstruction shall be completed within seventy-five (75)

days after the damage occurred or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable period of time thereafter. The Owner shall pay all costs which are not covered by insurance proceeds.

Article IX
Easements

9.1 General. Each Unit shall be subject to those easements, if any, shown or set forth on any recorded plat(s) for the Development, as amended from time to time as well as the easements now or hereafter established by the Declarant in this Declaration or by any other document recorded in the Office of Superior Court of Cherokee County, Georgia.

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

(a) The right of the Association, without a vote of the Members, to control the use and enjoyment of specific portions of the Common Property, including, without limitation, by closing a portion of a Common Property sidewalk for use as a patio area, an exterior display area, or similar area as part of the operation of a business located in a Unit, subject to such reasonable rules and regulations and conditions as the Board may adopt from time to time.

(b) The right of the Association to suspend the right of an Owner to use and enjoy the Common Property, for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, architectural guidelines or rules and regulations.

(c) The right of the Association, acting through the Board of Directors, with the written consent of the Declarant, but without a vote of the Members, to sell, transfer, dedicate or grant licenses, permits, easements or other rights-of-way over, under and through the Common Property.

(d) The right of the Association to mortgage, dedicate, transfer or encumber, all or any portion of the Common Property or any interest therein, subject to such conditions as may be agreed to by the Owners. No such mortgage, dedication, transfer or encumbrance shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least two-thirds (2/3) of the Total Association Vote and the consent of the Declarant. The Association shall not mortgage, transfer or encumber any portion of the Common Property which may provide ingress and egress to any Unit; provided however, any such property may be dedicated to a governmental entity for use as a public street without a vote.

(e) Any other rights of Owners, the Association, the Declarant and other Persons as set forth herein, provided by any instrument recorded in the Cherokee County, Georgia land records, including, without limitation, including, without limitation, the Easement and Cost Sharing Agreement, or otherwise provided by law.

9.3 Easements for Utilities.

(a) Association. There is hereby reserved to the Declarant and granted to the Association, the perpetual nonexclusive right and blanket easement upon, across, above and under all Units within the Development for access, ingress, egress, installation, alteration, repairing, replacing and maintaining all utilities serving the Development or any portion thereof, including, but not limited to, gas, water, storm water drainage, sanitary sewer, telephone and electricity. The Declarant shall have the right to alter drainage and water flow, and install, repair, replace and maintain such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Association, with the consent of Declarant, shall have the right to grant such easement. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

(b) Unit Owner. Declarant hereby establishes for the benefit of each Unit a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cables, conduits, utility lines, air conditioning compressor, flues and ducts serving such Unit and situated in, on or under any other Unit or the Common Property. Certain utility meters and facilities may be installed on the end of a building containing multiple Units and utility lines serving one Unit may run across, over, under or through adjacent Units. In the event that any Owner desires access to another Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, air conditioning compressor, flue or duct, the Owner shall contact the Owner of such other 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 for access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a 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 Units, reasonable steps shall be taken to protect such 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. Owners shall not remove, relocate or interfere in any way with any previously installed utility meters, lines and facilities. If and to the extent that the easement(s) established herein inure to the benefit of one or more Condominium Units, the rights hereunder may also be exercised by the Condominium Association having jurisdiction thereover.

9.4 Easement for Entry. In addition to the right of the Association to exercise self-help as provided herein, the Board of Directors and agents of the Association shall have the right, but shall not be obligated, to enter upon any property within the Development for emergency, security and safety reasons. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Association to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner fails to cure the condition upon request by the Board of Directors.

9.5 Easement for Maintenance.

(a) Association. Declarant hereby grants to the Association a perpetual easement for the benefit of the Association across the exterior portions of all Units and any Condominium as may be reasonably necessary for maintenance conducted pursuant to this Declaration. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Units, and reasonable steps shall be taken to protect such property.

(b) Unit Owner. Declarant hereby reserves for the benefit of each Unit reciprocal appurtenant easements between adjacent Units and an easement for the benefit of each Unit over adjacent Common Property for the purpose of maintaining or repairing the improvements located on each Unit. The easements granted herein shall extend to a distance of ten (10) feet as measured from any point on the common boundary between the Units. The easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. In the event that any Owner desires access to another Unit to perform maintenance hereunder, the Owner shall contact the Owner of such other 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 for access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a 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 Units, reasonable steps shall be taken to protect such 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.

(c) Condominium. Declarant hereby reserves an easement for the benefit of any Condominium Association over Common Property adjacent to any Condominium for the purpose of maintaining or repairing the improvements located on any such Condominium. The easements granted herein shall extend to a distance of ten (10) feet as measured from any point on the common boundary between the Common Property and Condominium. The easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Condominium Association exercising this easement right shall be liable for the prompt repair of any damage to the Common Property over which this easement is exercised which arises out of such maintenance or repair work.

9.6 Easement for Encroachment and Overhang. Declarant hereby establishes for the benefit of each Owner and the Association a reciprocal appurtenant easement for encroachment and overhang between adjacent Units, between each Unit and adjacent Common Property and between any Condominium and adjacent Common Property, due to the original construction or the unintentional placement or settling or shifting of the improvements including, but not limited to, retaining walls, downspouts and gutters 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 in the original construction of the Units.

9.7 Easement for Signage, Lighting, and Similar Items. There is hereby reserved to Declarant and granted to the Association a nonexclusive easement over the exterior portions of all Units and any Condominium for the purpose of erecting and maintaining street intersection signs, directional signs, exterior Development lighting, and similar items. Rights hereunder shall be exercised with a minimum of interference to the quiet enjoyment of Units, and reasonable steps shall be taken to protect such property.

9.8 Easement for Drainage. There is hereby reserved to the Declarant and granted to the Association a blanket easement across all Units and any Condominium for creating and maintaining satisfactory storm water drainage in the Development; provided, however, such easement area shall not include any enclosed portion of a Unit structure. 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. It is anticipated that increased storm water run-off across downstream Units will result from the construction of impervious surface within or adjacent to the Development. Neither the Declarant, the Association or any builder or Owner constructing according to plans and specifications approved under Article 6 hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction within the Development.

9.9 Easement for Private Streets and Roads. 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, parking areas and roads within the Development. 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, (c) invitees and licensees of the Owners and Occupants; and (d) such Persons as may be authorized under the Easement and Cost Sharing Agreement. Declarant hereby expressly reserves for itself, its successors 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, parking areas and roads for the installation, maintenance, and use of such streets, parking areas and roads, sidewalks, traffic directional signs, grading for proper drainage of said streets, parking areas and roads, and related activities and improvements.

9.10 Construction and Sale Period Easement. Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, Declarant reserves unto itself a nonexclusive easement across the Development for Declarant to maintain and carry on, upon such portion of the Development as Declarant may reasonably deem necessary, such facilities

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

ParticipantIDs: 1358594985 SubmitterID: 7067927936

and activities as in the sole opinion of Declarant may be required, convenient or incidental to Declarant's development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or any other property being developed by Declarant, including, but not limited to: (a) the right to place or authorize the placement of marketing and directional signs on Units or right-of-way(s) at street intersections within the Development; (b) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Development, including, without limitation, any Unit; (c) the right to tie into any portion of the Development with streets, driveways, paths, parking areas and walkways; (d) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Development; (e) the right to grant easements over, under, in or on the Development, including without limitation the Units, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Development; (f) the right of Declarant, without the consent of any other Person, to revise and re-record the subdivision plat(s) of the Development, including, without limitation, creating and/or more specifically describing any Unit, changing any Unit or portion of a Unit to Common Property, changing any Common Property to a Unit, or creating a public or private street over all or any portion of a Unit or other property within the Development; provided, however, the boundary lines of any Unit not owned by Declarant shall not be changed without the written consent of the Owner(s) and Mortgagee(s) of such Unit; (g) the right to construct recreational facilities, utilities and other improvements on Common Property; (h) the right to carry on sales and promotional activities in the Development; and (i) the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. The easement rights reserved and granted herein may be exercised by Declarant and its successors and assigns, authorized agents, employees, contractors and sub-contractors. Declarant may use Units, offices or other buildings owned or leased by Declarant as model spaces and sales offices without charge. This Section shall not be amended without the written consent of Declarant until the rights of Declarant have terminated as herein provided.

Article X General Provisions

10.1 Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, the rules and regulations, the architectural guidelines, and the use restrictions, as they may be amended or modified from time to time, and with the covenants, conditions, restrictions and easements set forth in this Declaration and in the deed to such Owner's Unit, if any. The Board of Directors may impose fines or other sanctions for violations of the foregoing, counting each day a violation continues after notice thereof as a separate violation, which fines shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws, the architectural guidelines or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, including, without limitation, reasonable attorney's fees actually incurred, maintainable by the Association the Declarant or an Owner. Failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have

the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or architectural guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for noncompliance with any of the foregoing.

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

10.3 Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking, an alternative plan is approved by at least two-thirds (2/3) of the Total Association Vote and the Declarant, 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 therefor. The provisions hereof 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.

10.4 Self-Help. In addition to any other remedies provided for herein, the Association, the Declarant, or their respective duly authorized agents shall have the power to enter upon any Unit or any other portion of the Development to abate or remove any structure, thing or condition which violates the Declaration, the Bylaws, the rules and regulations, the use restrictions or architectural guidelines. Unless an emergency situation exists, the violating Owner shall be given ten (10) days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed or booted after giving any notice required by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the Unit of the violating Owner as a specific assessment. The Association, Declarant or their respective duly authorized agents shall not be liable for any claim of damage arising from the rights granted pursuant to this Section.

10.5 Duration. The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Development and shall inure to the benefit of and shall be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, if and to the extent that, Georgia law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision(s) shall be: (a) automatically extended for successive periods of twenty (20) years (or the maximum period allowed by Georgia law, if less), unless a written instrument signed by the then Owners of at least two-thirds (2/3) of the Units and Declarant, if it is the owner of any

real property subject to this Declaration, has been recorded within the two years immediately preceding the beginning of a twenty (20) year renewal period agreeing to terminate the same; or (b) extended, renewed, modified or terminated as otherwise provided herein or by applicable law. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended, renewed, modified or terminated as provided in this Section.

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

10.7 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration. The Declarant may also unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not impose a greater restriction on the use or development of a Unit without the written consent of the Owner thereof. In addition to the above, this Declaration may be amended upon the affirmative vote or written consent or combination of affirmative vote and written consent of Owners holding at least two-thirds (2/3) of the Total Association Vote and the consent of Declarant.

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

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

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

10.10 Notices. Notices provided for in this Declaration or the Articles of Incorporation or Bylaws shall be in writing, and shall be addressed to any Owner at the address of the Unit or such other address for the Owner as shall be on file with the Association and to the Declarant, the Association or any Condominium Association at the address of their respective registered agent in the State of Georgia. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Owners shall keep the Association advised of their current address and phone number(s) where they can be reached. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by commercial courier service, or issued electronically in accordance with Chapter 12 of Title 10 of the Official Code of Georgia Annotated, the "Uniform Electronic Transactions Act". The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or receipt on the return receipt of the notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

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

10.12 No Merger. There shall be no merger of any of the covenants, conditions, restrictions or easements created or reserved hereby with the fee estate of Declarant, by reason of the fact that Declarant may own or hold the estate or interest both encumbered and benefited by such covenants, conditions, restrictions or easements and no such merger shall occur unless and until Declarant, while owning all of the estate or interests shall execute a written instrument affecting such merger and shall duly record the same in the Cherokee County, Georgia land records.

10.13 Preparer. This Declaration was prepared by Michael E. Leavey, Dorough & Dorough, LLC, 160 Clairemont Avenue, Suite 650, Decatur, Georgia 30030.

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

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

10.16 Security. The Declarant or the Association may, from time to time, take steps to provide some measure of security on the Common Property of the Development; however, neither the Declarant nor the Association is a provider of security and shall have no duty to provide any security on the Common Property of the Development or otherwise. The obligation to provide security lies solely with each Unit Owner individually. Neither Declarant, the Association nor any Owner guarantees or assures to any other Owner or to any other party whomsoever that any security measures installed by the Declarant or the Association will in any manner whatsoever provide personal protection or security to any Owner or Occupant, their personal possessions or to guests or invitees, or to any other person, and each Owner, by the acceptance of its deed, shall have assumed the entire risk as between such Owner and Declarant or the Association for any loss or damage to person or property within the Development arising from any deficiency, failure or defect in any security measures or otherwise.

10.17 Indemnification. To the fullest extent allowed by applicable Georgia law, the Association shall indemnify every officer, director and committee member against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

10.18 Notice of Sale, Lease or Acquisition. In the event that an Owner sells or leases such Owner's Unit, the Owner shall give to the Association, in writing, prior to the effective date of such sale or lease, the name of the purchaser or lessee of the Unit and such other information as the Board of Directors may reasonably require. Upon acquisition of a Unit each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board of Directors may reasonably require.

10.19 Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or

rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

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

10.21 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Owners holding at least seventy five percent (75%) of the Total Association Vote. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration, (b) the imposition and collection of assessments as provided herein, (c) proceedings involving challenges to *ad valorem* taxation, (d) counterclaims brought by the Association in proceedings instituted against it, or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for goods or services to which the Association is a party. This Section shall not be amended unless such amendment is made unilaterally by the Declarant as provided herein or is approved by the percentage votes necessary to institute proceedings as provided above.

10.22 Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Condominium Declaration and the Association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions, and the provisions of any articles of incorporation, bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Condominium Declaration or Condominium Association shall be subject and subordinate to those of this Declaration and the Association. In the event of a conflict between the provisions of this Declaration and the provisions of Georgia law, then to the extent that the provisions of Georgia law cannot be waived by agreement, Georgia law shall control.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Declarant herein hereby executes this instrument under seal, this 24 day of July, 2020.

DECLARANT: **SOUTH ON MAIN, LLC**, a Georgia limited liability company

By: F. David Durham (SEAL)
Name: F. David Durham
Title: Manager

Signed, sealed, and delivered
in the presence of:

[Signature]
WITNESS

[Signature]
NOTARY PUBLIC

My Commission Expires: 9/10/2020

[AFFIX NOTARY SEAL]

P:\Clients\4224\South On Main\Commercial\Declaration - South on Main Commercial v4.docx



CONSENT OF LIEN HOLDER

SYNOVUS BANK ("Lender"), as holder of: (a) that certain Deed to Secure Debt and Security Agreement, dated July 10, 2019 and recorded July 24, 2019 in Deed Book 14377, Page 2653, *et seq.*, Cherokee County, Georgia land records; and (b) that certain Deed to Secure Debt and Security Agreement, dated July 10, 2019 and recorded July 24, 2019 in Deed Book 14377, Page 2543, *et seq.*, Cherokee County, Georgia land records (hereinafter collectively referred to as the "Security Instruments"), encumbering all or a portion of the property described in the foregoing Declaration of Easements and Cost Sharing Agreement (as amended and/or supplemented from time to time, the "Declaration") to which this Consent and Subordination is attached, hereby consents to and subordinates the Security Instruments to the Declaration, and Lender agrees that all of its right, title and interest in and to the real property described therein by virtue of the Security Instruments shall be bound by, subject to and subordinate to the easements and other terms and provisions of the Declaration, and the Declaration shall survive any foreclosure, deed in lieu of foreclosure and/or exercise of any remedy by Lender pursuant to the Security Instruments; provided, however, that nothing herein shall otherwise modify, alter or amend the Security Instruments as between Lender and the borrower thereunder.

This 17th day of August, 2020.

LENDER: SYNOVUS BANK

By:
Print Name:
Title:

Adam Smith, Sr.
Adam Smith
Senior Vice President

Signed, sealed, and delivered
in the presence of:

[BANK SEAL]

WITNESS

NOTARY PUBLIC

My Commission Expires: 7-11-23

[NOTARY SEAL]

JENNIFER B SHELNUTT
Notary Public - State of Georgia
Cherokee County
My Commission Expires Jul 11, 2023

EXHIBIT "A"

Property Submitted to this Declaration of Protective Covenants,
Conditions, Restrictions and Easements upon Filing in the Public Records

LEGAL DESCRIPTION

PARCEL A

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 1140, 15th DISTRICT, 2nd SECTION, CITY OF WOODSTOCK, CHEROKEE COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF WESTERN RIGHT-OF-WAY OF GEORGIA HIGHWAY 5 (a.k.a. CANTON HIGHWAY, a.k.a. MAIN STREET, 60' R/W) WITH THE NORTHERN RIGHT-OF-WAY OF BRIGHTON BOULEVARD (80' R/W); THENCE ALONG THE NORTHERN RIGHT-OF-WAY OF SAID BRIGHTON BOULEVARD, SOUTH 85°59'29" WEST, A DISTANCE OF 83.31 FEET TO A POINT; THENCE LEAVING SAID RIGHT-OF-WAY AND ALONG THE PROPERTY NOW OR FORMERLY BELONGING TO BREEZY HILL LAND, LLC, NORTH 04°00'32" WEST, A DISTANCE OF 130.10 FEET TO A POINT; THENCE ALONG THE PROPERTY NOW OR FORMERLY BELONGING TO TERRY HILTON, NORTH 84°12'36" EAST, A DISTANCE OF 86.20 FEET TO AN IRON PIN FOUND (1/2" REBAR) ON THE WESTERN RIGHT-OF-WAY OF SAID GEORGIA HIGHWAY 5; THENCE ALONG SAID RIGHT-OF-WAY THE FOLLOWING COURSES AND DISTANCES: SOUTH 10°21'03" WEST, A DISTANCE OF 14.78 FEET TO A POINT; THENCE SOUTH 03°13'53" EAST, A DISTANCE OF 106.67 FEET TO A POINT; THENCE SOUTH 14°53'54" EAST, A DISTANCE OF 12.01 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 0.248 ACRE OR 10,782 SQUARE FEET.

Rec: \$25.00

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

ParticipantIDs: 1358594985 SubmitterID: 7067927936

TOGETHER WITH:

LEGAL DESCRIPTION

PARCEL B

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 1140, 15th DISTRICT, 2nd SECTION, CITY OF WOODSTOCK, CHEROKEE COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE WESTERN RIGHT-OF-WAY OF GEORGIA HIGHWAY 5 (a.k.a. CANTON HIGHWAY, a.k.a. MAIN STREET, 60' R/W) WITH THE SOUTHERN RIGHT-OF-WAY OF BRIGHTON BOULEVARD (80' R/W); THENCE ALONG THE WESTERN RIGHT-OF-WAY OF SAID GEORGIA HIGHWAY 5, SOUTH 07°23'00" EAST, A DISTANCE OF 143.47 FEET TO A POINT; THENCE LEAVING SAID RIGHT-OF-WAY AND INTO THE PROPERTY NOW OR FORMERLY OF BREEZY HILL LAND, LLC, SOUTH 85°59'29" WEST, A DISTANCE OF 89.09 FEET TO A POINT; THENCE SOUTH 04°00'31" EAST, A DISTANCE OF 70.98 FEET TO A POINT; THENCE SOUTH 85°59'29" WEST, A DISTANCE OF 71.00 FEET TO A POINT; THENCE NORTH 04°00'31" WEST, A DISTANCE OF 81.66 FEET TO A POINT; THENCE NORTH 85°59'29" EAST, A DISTANCE OF 18.82 FEET TO THE WESTERN RIGHT-OF-WAY OF A PRIVATE ALLEY AND UTILITY EASEMENT (30' R/W); THENCE ALONG SAID RIGHT-OF-WAY THE FOLLOWING COURSES AND DISTANCES: THENCE 11.89 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 37.61 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 13°36'31" EAST, 11.84 FEET TO A POINT; THENCE NORTH 85°58'35" EAST, A DISTANCE OF 30.00 FEET TO A POINT; THENCE 25.92 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 67.61 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 15°18'03" WEST, 25.76 FEET A POINT; THENCE 14.93 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 37.48 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 14°52'26" WEST, 14.83 FEET TO A POINT; THENCE NORTH 03°27'51" WEST, A DISTANCE OF 104.39 FEET TO A POINT ON THE SOUTHERN RIGHT-OF-WAY OF SAID BRIGHTON BOULEVARD; THENCE ALONG SAID RIGHT-OF-WAY, NORTH 85°59'29" EAST, A DISTANCE OF 107.69 FEET TO THE POINT OF BEGINNING.
SAID PARCEL CONTAINS 0.486 ACRE OR 21,183 SQUARE FEET.

EXHIBIT "B"

Property Which May Be Submitted to this Declaration of Protective Covenants.
Conditions, Restrictions and Easements in the Future

All that tract or parcel of land lying and being in Land Lots 1139 and 1140 of the 15th District, 2nd Section, Cherokee County, Georgia.

EXHIBIT "C"

BYLAWS

OF

SOUTH ON MAIN COMMERCIAL OWNERS ASSOCIATION, INC.

Prepared by:
Michael E. Leavey
Dorough & Dorough, LLC
Attorneys at Law
160 Clairemont Avenue, Suite 650
Decatur, Georgia 30030
(404) 687-9977

BYLAWS
OF
SOUTH ON MAIN COMMERCIAL OWNERS ASSOCIATION, INC.

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BYLAWS
OF
SOUTH ON MAIN COMMERCIAL OWNERS ASSOCIATION, INC.

Article 1
Name, Membership, Applicability and Definitions

1.1 Name. The name of the corporation shall be South on Main Commercial Owners Association, Inc. (hereinafter sometimes referred to as the "Association").

1.2 Membership. The Association shall have one class of membership, as is more fully set forth in that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements for South on Main Commercial Center (such Declaration, as amended, supplemented, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

1.3 Definitions. The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit, or the meanings given in the Georgia Nonprofit Corporation Code (O.C.G.A. Section 14-3-101, *et seq.*) (the "Nonprofit Code"). Statutory references shall be construed as meaning the referenced statute or portion thereof as the same may exist from time to time.

Article 2
Association: Meetings, Quorum, Voting, Proxies

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

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

2.3 Special Meetings. The President or the Board of Directors may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association upon the delivery of a petition signed and dated by members entitled to cast at least twenty-five percent (25%) of the Total Association Vote and describing the purpose or purposes for which it is to be held. The notice of any special meeting shall state the date, time, and place

of such meeting and the purpose(s) thereof. No business shall be transacted at a special meeting, except those matters that are within the purpose or purposes described in the notice.

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

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

2.6 Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing or by electronic transmission signed by the member entitled to notice and delivered to the Association for inclusion in the minutes for filing with the Association's records, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of lack of notice or defective notice, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

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

2.8 Membership List. After the record date for any meeting is established by the Board of Directors, the Secretary shall prepare an alphabetical list of the names and addresses of all of the members who are entitled to notice of the meeting. Beginning at least two (2) business days after notice is given of the meeting for which the list was prepared, the list of members shall be available for inspection by any member or a member's agent or attorney: (1) on a reasonably accessible electronic network, provided that the information required to gain access to such list is included with the notice of the meeting or upon request; or (2) during ordinary business hours at the Association's principal office or at such other reasonable place as may be specified in the notice in the city where the meeting will be held. In the event that the Association makes the list available on an electronic network, the Association may take reasonable steps to ensure that such information is available only to members of the Association. In addition, the list shall be available for inspection at the meeting or any adjournment thereof.

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

2.10 Proxies. At all meetings of members, each member may vote in person or by proxy. All proxy appointment forms shall be in writing, signed either personally or by an electronic transmission, dated, and filed with the Secretary before the appointed time of each meeting. An electronic transmission must contain or be accompanied by information acceptable to the Board from which it can be determined that the member, the member's agent, or the member's attorney-in-fact authorized the electronic transmission. Proxies may be delivered to the Board of Directors by personal delivery, U.S. mail or electronic transmission to the Secretary or other officer or agent authorized to tabulate votes. Every proxy shall be revocable and shall automatically cease upon: (a) receipt of notice by the Secretary of the death or judicially declared incompetence of a member; (b) receipt by the Secretary or other officer or agent authorized to tabulate votes of written revocation signed by the member; (c) receipt by the Secretary or other officer or agent authorized to tabulate votes of a subsequent appointment form signed by the member; (d) attendance by the member and voting in person at any meeting; or (e) the expiration of eleven (11) months from the date of the proxy appointment form.

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

2.12 Action By Written Consent. Any action required or permitted to be approved by the members may be approved without a meeting if one (1) or more consents, in writing or by electronic transmission, setting forth the action so taken, shall be signed, either personally or by an electronic transmission, 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 seventy (70) days of the record date for such action. If less

than unanimous consent is obtained, the approval shall be effective ten (10) days after the Secretary gives written notice of the approval to all members who did not sign a consent. Each consent, in writing or by electronic transmission, shall be included in the minutes of meetings of members filed in the permanent records of the Association. No consent in writing or by electronic transmission shall be valid unless: (1) the consenting member has been furnished the same material that, pursuant to the Nonprofit Code, would have been required to be sent to members in a notice of a meeting at which the proposed action would have been submitted to the members for action; or (2) the written consent contains an express waiver of the right to receive the material otherwise required to be furnished.

2.13 Action by Written Ballot. Any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if approved by ballot in writing or by electronic transmission as provided herein. The Association shall deliver a ballot in writing or by electronic transmission to each member entitled to vote on the matter. The ballot in writing or by electronic transmission shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by ballot in writing or electronic transmission 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 ballot in writing or by electronic transmission received by the Association may not be revoked. Approval by ballot in writing or by electronic transmission 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 ballot in writing or by electronic transmission 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 3

Board of Directors: Number, Powers, Meetings

3.1 Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors. Directors shall be natural persons who are eighteen (18) years of age or older.

3.2 Directors Appointed by Declarant. Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (a) the date on which the Declarant no longer owns any property in the Development or subject to annexation to the Development; or (b) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of property within the Development, vests in Declarant such authority to appoint and remove directors and officers of the Association. The directors selected by the Declarant need not be Owners or Occupants in the Development.

3.3 Number of Directors. During the period that the Declarant has the right to appoint and remove the officers and directors of the Association as provided above, the Board of Directors shall consist of one (1) to three (3) members as determined by Declarant in writing from time to time. Thereafter, the Board shall consist of three (3) directors, who shall be elected as provided below.

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

3.5 Election and Term of Office. After the Declarant's right to appoint directors and officers terminates, the Association shall call an annual or special meeting (or take action under Section 2.12 or Section 2.13 in lieu of a meeting) and the members shall elect three (3) directors. The members of the Board of Directors shall hold office for one (1) year and shall continue in office until their respective successors shall have been elected and take office. At annual meetings of the membership thereafter (or pursuant to Section 2.12 or Section 2.13 in lieu of a meeting), directors shall be elected. All eligible Members of the Association may vote on the election of directors, and the candidates receiving the most votes shall be elected.

3.6 Removal of Directors. At any annual, regular or special meeting of the Association, any one (1) or more of the members of the Board of Directors elected by the members may be removed, with or without cause, by a majority of the Total Association Vote and a successor may then and there be elected to fill the vacancy thus created. The notice of the meeting shall state that the purpose or one of the purposes of the meeting is removal of a director. A director whose removal by the members has been proposed shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the remaining directors. This Section shall not apply to directors appointed by the Declarant.

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

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

3.9 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board, provided that, after the right of Declarant to appoint the directors terminates, at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

3.10 Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two (2) directors. The notice shall specify the date, time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery (including commercial delivery service) to such director's address on file with the Association; (b) written notice by first class mail, postage prepaid; (c) by telephone communication (including facsimile), either directly to the director or to the director's home or office; or (d) issued electronically in accordance with the Nonprofit Code, if the director has consented in writing to such method of delivery and has provided the Board with an address regarding the same. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited with the U.S. Postal Service at least four (4) days before the date of the meeting. Notices given by personal delivery, electronic transmission or telephone shall be given at least two (2) days before the day of the meeting.

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

3.12 Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors.

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

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

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

3.16 Action without a Formal Meeting. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing or

by electronic transmission, 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. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

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

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

(a) preparing and adopting an annual budget in which there shall be established the contribution of each member to the common expenses;

(b) making assessments to defray the common expenses and establishing the means and methods of collecting such assessments;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;

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

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending rules and regulations;

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

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the members concerning the Association, which enforcement power shall include, without limitation, the power to levy fines as provided herein and in the Declaration in

such amounts as from time to time the Board may deem proper in the circumstances, counting each day a violation continues after notice from the Board as a separate violation;

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

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

(k) paying the cost of all services, if any, rendered to the Association or its Members which are not chargeable directly from the service provider to Owners of Units; and

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

3.19 Management Agent. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. Declarant, or an affiliate of Declarant, may be employed as managing agent or manager. The term of any management agreement shall not exceed one (1) year and shall be subject to termination by either party, without cause and without penalty, upon ninety (90) days' written notice.

3.20 Borrowing. The Board of Directors shall have the power to borrow money without the approval of the members of the Association; provided, however, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the total amount of such borrowing exceeds or would exceed an amount equal to or greater than fifty percent (50%) of the annual budget of the Association in any given year.

3.21 Fining Procedure. A fine shall not be imposed (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(a) Written notice shall be delivered to the member in accordance with the Declaration to the address of the member shown on the Association's records, specifying:

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

(2) that the violator may, within ten (10) days or, in the event of an unapproved sign, twenty four (24) hours, from the date of the notice, request a hearing in writing regarding the fine imposed;

(3) the name, address and telephone number of a person to contact to challenge the fine;

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

(5) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days or, in the event of an unapproved sign, twenty-four (24) hours, of the date of the notice.

(b) If a hearing is requested within the requisite time provided above, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. No fine shall be imposed prior to the date that is five (5) days or, in the event of an unapproved sign, twenty-four (24) hours, after the date of the hearing, as applicable.

(c) Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the violation recurs, the Board may, upon notice stating the nature of the violation and delivered to the member by first class or certified mail sent to the address of the member shown on the Association's records, impose a fine.

Article 4 Officers

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. During the time that the Declarant has the right to appoint the officers and directors of the Association as provided in these Bylaws, all offices may be held by the same Person. Thereafter, any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

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

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

4.4 Salaries. The officers shall receive no compensation.

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

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

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

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

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

4.10 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Article 5
Committees

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

Article 6
Miscellaneous

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

6.2 Parliamentary Rules. Unless otherwise determined by the Board of Directors, *Roberts Rules of Order* (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Georgia law, the Articles of Incorporation, the Declaration or these Bylaws.

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

6.4 Electronic Records, Signatures and Documents. To the extent permitted by the Uniform Electronic Transaction Act, O.C.G.A. § 10-12-1, *et seq.*, the Nonprofit Code, the Declaration and these Bylaws, the Association and its members, officers, directors, Owners and Occupants may perform any obligation or exercise any right by use of electronic means providing sufficient security, reliability, identification and verifiability, which electronic means have been approved by the Board of Directors in its sole discretion.

6.5 Amendment. The Declarant may unilaterally amend these Bylaws for any purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights or obligations of any Owner without the written consent of such Owner. These Bylaws may be amended by the Board of Directors, with the consent of the Declarant, if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith. In addition, these Bylaws may be amended upon the affirmative vote, written consent or any combination of affirmative vote and written consent of Members entitled to cast at least two-thirds (2/3) of the Total Association Vote and the consent of Declarant.

Amendments to these Bylaws shall become effective upon recordation unless a later effective date is specified therein.

The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by the Declaration, these Bylaws, the Articles of Incorporation and Georgia law were given.

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