

*Albert E. Cain*  
*429 Creekstone Ridge*  
*Woodstock, GA 30188*

Deed Book **12052** Pg **310**  
Filed and Recorded 10/18/2012 10:14:52 AM  
28-2012-035072

Patty Baker  
Clerk of Superior Court Cherokee Cty, GA

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
AND BYLAWS  
FOR

CREEKSTONE OFFICE PARK

As restated and updated effective November 1, 2013

**-- TABLE OF CONTENTS --**

	<u>Page</u>
<b>DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS</b> _____	<b>7</b>
<b>Article I DEFINITIONS</b> _____	<b>8</b>
<b>Article II Property Rights and Interests</b> _____	<b>10</b>
2.1. Units. _____	10
2.2. Common Area. _____	11
2.3. No Partition. _____	11
2.4. Condemnation. _____	11
<b>Article III Membership and Voting Rights</b> _____	<b>12</b>
3.1. Function of Association. _____	12
3.2. Membership. _____	12
3.3. Voting. _____	12
<b>Article IV Rights and Obligations of the Association</b> _____	<b>13</b>
4.1. Common Area. _____	13
4.2. Personal Property and Real Property for Common Use. _____	13
4.3. Enforcement. _____	13
4.4. Implied Rights; Board Authority. _____	14
4.5. Indemnification. _____	14
4.6. Security. _____	14
4.7. Conveyance or Encumbrance of Common Area. _____	15
4.8. Provision of Services. _____	15
4.9. Parking Areas. _____	15
<b>Article V MAINTENANCE</b> _____	<b>16</b>
5.1. Owner's Responsibility. _____	16
5.2. Association's Responsibility. _____	16
5.3. Standard of Performance. _____	17
5.4. Party Walls. _____	17
<b>Article VI INSURANCE and Casualty Losses</b> _____	<b>18</b>
6.1. Association Insurance. _____	18
6.2. Owners' Insurance. _____	19
<b>Article VII ASSESSMENTS</b> _____	<b>20</b>
7.1. Creation of/and Obligation for Assessments. _____	20
7.2. Declarant's Obligation for Assessments. _____	21
7.3. Computation of General Assessments. _____	21
7.4. Special Assessments. _____	22
7.5. Specific Assessments. _____	22
7.6. Lien for Assessments. _____	23
7.7. Capital Reserve Contributions. _____	23
7.8. Date of Commencement of Assessments. _____	23
7.9. Budgeting for Reserves. _____	24

<b>Article VIII Architectural Standards</b>	<b>24</b>
8.1. General.	24
8.2. Architectural Review.	24
8.3. Procedures.	25
8.4. No Waiver of Future Approvals.	25
8.5. Limitation of Liability.	25
8.6. Enforcement.	25
<b>Article IX Restrictions and Rules</b>	<b>26</b>
9.1. Community-Wide Standard; Applicability; Effect.	26
9.2. Authority to Promulgate Restrictions and Rules.	26
9.3. Owners' Acknowledgment.	27
9.4. Rights of Owners.	27
<b>Article X Easements</b>	<b>28</b>
10.1. Easements of Encroachment.	28
10.2. Easements for Utilities, Etc.	28
10.3. Easements for Stormwater Runoff.	29
10.4. Right of Entry.	29
10.5. Easements to Serve Additional Property	30
10.6. Association's Exclusive Right and Easement to Tap into Existing Utilities.	30
<b>Article XI Mortgagee Provisions</b>	<b>30</b>
11.1. Notices of Action.	30
11.2. No Priority.	31
11.3. Notice to Association.	31
<b>Article XII Association's Rights</b>	<b>31</b>
12.1. Assignment.	31
12.2. Easements.	31
12.3. Annexation; Additional Covenants.	32
<b>Article XIII Dispute Resolution and Limitation on Litigation</b>	<b>33</b>
13.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.	33
13.2. Exempt Claims.	33
13.3. Mandatory Procedures for All Other Claims.	34
<b>Article XIV General Provisions</b>	<b>35</b>
14.1. Duration.	35
14.2. Amendment.	35
14.3. Severability.	36
14.4. Litigation.	36
14.5. Compliance.	37
<b>CERTIFICATION OF COVENANTS</b>	<b>37</b>
<b>EXHIBIT "A" – THE PROPERTIES</b>	<b>38</b>
<b>EXHIBIT "B" - LAND SUBJECT TO ANNEXATION</b>	<b>39</b>
<b>EXHIBIT "C" - CREEKSTONE RULES AND RESTRICTIONS</b>	<b>40</b>
1.1. Initial Restrictions and Rules	40
1.2. Prohibited Activities	40
1.3. Prohibited Uses	41

1.4.	Sale or Lease _____	42
<b>EXHIBIT "D" - CREEKSTONE OFFICE PARK OWNERS BYLAWS _____</b>		<b>44</b>
<b>Article I</b>	<b>Name, Principal Office, and Definitions _____</b>	<b>45</b>
1.1.	Name. _____	45
1.2.	Principal Office. _____	45
1.3.	Definitions. _____	45
<b>Article II.</b>	<b>Association: Membership, Meetings, Quorum, Voting and Proxies _____</b>	<b>45</b>
2.1.	Membership. _____	45
2.2.	Place of Meetings. _____	46
2.3.	Annual Meetings. _____	46
2.4.	Special Meetings. _____	46
2.5.	Notice of Meetings. _____	46
2.6.	Waiver of Notice. _____	46
1.5.	_____	47
2.7.	Adjournment of Meetings. _____	47
2.8.	Voting. _____	47
2.9.	Proxies. _____	47
2.10.	Majority. _____	47
2.11.	Quorum. _____	48
2.12.	Conduct of Meetings. _____	48
2.13.	Action Without a Meeting. _____	48
<b>Article III</b>	<b>Board of Directors _____</b>	<b>48</b>
1.6.	<b>A. NUMBER, POWERS, MEETINGS - Composition and Selection. _____</b>	<b>48</b>
3.1.	Governing Body; Composition. _____	48
3.2.	Number of Directors. _____	48
3.3.	Directors During Class "B" Control Period. _____	49
3.4.	Nomination and Election of Directors. _____	49
3.5.	Election and Term of Office. _____	49
3.6.	Removal of Directors and Vacancies. _____	49
1.7.	<b>B. Meetings. _____</b>	<b>50</b>
3.7.	Organizational Meetings. _____	50
3.8.	Regular Meetings. _____	50
3.9.	Special Meetings. _____	50
3.10.	Waiver of Notice. _____	50
3.11.	Telephonic or E-Mail Participation in Meetings. _____	50
3.12.	Quorum of Board of Directors. _____	51
3.13.	Compensation. _____	51
3.14.	Conduct of Meetings. _____	51
3.15.	Notice to Owners; Open Meetings. _____	51
3.16.	Action Without a Formal Meeting. _____	52
1.8.	<b>C. Powers and Duties. _____</b>	<b>52</b>
3.17.	Powers. _____	52
3.18.	Duties. _____	52
3.19.	Management _____	53
3.20.	Accounts and Reports. _____	53
3.21.	Borrowing. _____	54
3.22.	Right to Contract. _____	54

3.23.	Enforcement.	54
3.24.	Owner(s) Liability Insurance Required	55
3.25.	Interest and Penalties Effective July 1, 2012	56
<b>Article IV</b>	<b>Officers</b>	<b>57</b>
4.1.	Officers.	57
4.2.	Election and Term of Office.	57
4.3.	Removal and Vacancies.	58
4.4.	Powers and Duties.	58
4.5.	Resignation.	58
4.6.	Agreements, Contracts, Deeds, Leases, Checks, Etc.	58
4.7.	Compensation.	58
<b>Article V</b>	<b>Committees</b>	<b>58</b>
<b>Article VI</b>	<b>Miscellaneous</b>	<b>59</b>
6.1.	Fiscal Year.	59
6.2.	Parliamentary Rules.	59
6.3.	Conflicts.	59
6.4.	Books and Records.	59
6.5.	Notices.	60
6.6.	Amendment.	60
<b>CERTIFICATION OF BYLAWS</b>		<b>61</b>

**- TABLE OF EXHIBITS -**

<b><u>Subject Matter</u></b>	<b><u>Exhibit</u></b>
The Properties	A
Land Subject to Annexation	B
Initial Restrictions and Rules	C
By-Laws of Creekstone Office Park Owners Association, Inc.	D

COPY

## DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

### FOR

#### CREEKSTONE OFFICE PARK

THIS RESTATEMENT OF THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CREEKSTONE OFFICE PARK ("Declaration") is made as of the date set forth on the signature page hereof, by the Creekstone Office Park Owners Association, Inc., a Georgia nonprofit corporation (the "Association:") and also referred to as COPOA.

THE ASSOCIATION is now the owner of the real property described in Exhibit "A," and is responsible for the maintenance of the Common Area, and to administer and enforce the provisions of the Governing Documents.

The Association property shall be held, sold, used, and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to such real property. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

This document does not and is not intended to create a condominium within the meaning of the O.C.G.A. § 44-3-70, *et seq.*

#### WITNESSETH

WHEREAS, in accordance with Section 14.2 of the Declaration, Association may unilaterally amend the Declaration for any purpose, provided such amendment does not materially adversely affect the substantive rights of any Owner nor adversely affect title to any Unit (as such capitalized terms are defined in the Declaration); and

WHEREAS, Association desires to restate in its entirety the original Covenants and By-laws as approved by the Board of Directors pursuant to its authority under Section 14.2. This restatement removes most references to the "Declarant", the original developer, now that the management of the common area has been turned over to the Creekstone Office Park Owners Association, Inc. and "Part B" shares which were owned by the "Declarant" prior to the transfer to the Creekstone Office Park Owners Association as of December 31, 2007.

Further, the Covenants were updated to include Amendment 1 adding Section 7.9 and the Bylaws were updated to included Sections 3.24 and 3.25 to reflect changes in the insurance rules and assessments adopted by the Board of Directors pursuant to Section 3.18 of the bylaws on May 8, 2012 with Notice to the Owners included in the May billings.

WHEREAS, such amendment does not materially adversely affect the substantive rights of any Owner nor adversely affect title to any Unit;

## ARTICLE I DEFINITIONS

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

**"Area of Common Responsibility"**: The Common Area and such other areas, including certain portions of Units, for which the Association has or assumes responsibility pursuant to the terms of this Declaration or other applicable covenants, contracts, or agreements.

**"Articles of Incorporation" or "Articles"**: The Articles of Incorporation of Creekstone Office Park Owners Association, Inc., as filed with the Georgia Secretary of State.

**"Association"**: Creekstone Office Park Owners Association, Inc., a Georgia non-profit corporation, its successors or assigns.

**"Board of Directors" or "Board"**: The body responsible for administration of the Association, selected as provided in the By-Laws. The Board of Directors shall consist of seven members -- six members elected by the Owners and the Office Park Manager.

**"By-Laws"**: The By-Laws of Creekstone Office Park Owners Association, Inc., attached as Exhibit "D," as they may be amended.

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

**"CAM Fees"**: Refers to Common Area Maintenance fees shall be determined by the Board of Directors as a "General Assessment" levied on all units to fund Common Expenses.

**"Common Expenses"**: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation.

**"Community-Wide Standard"**: The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties at any time. Such standard shall be determined by the Board of Directors .

**"Declarant"**: Cain Rainey, LLC, a Georgia limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the Properties for development and/or sale and who is designated as Declarant in a Recorded instrument executed by the immediately preceding



Declarant. The Creekstone Office Park Owners Association, Inc. (hereinafter referred to as the ASSOCIATION, is the successor-in-title to the "Declarant" and now has full responsibility for the management of such Common Area effective January 1, 2008.

"General Assessment": Assessments levied on all Units to fund Common Expenses as more particularly described in Sections 7.1 and 7.3. This assessment shall be referred to as CAM (Common Area Maintenance) fees.

"Governing Documents": This Declaration, the By-Laws, the Articles of Incorporation, and any Restrictions and Rules established for the Properties.

"Member": A Person entitled to membership in the Association. Every Owner shall be a Member of the Association as described in Section 3.2.

"Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. A "Mortgagee" is a beneficiary or holder of a Mortgage.

"Office Park Manager": Initially, shall be The Cain Company, as appointed by the Declarant. The Office Park Manger shall continue to serve in accordance with the Management Agreement and at the will of the Board of Directors thereafter.

"Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a Recorded contract of sale and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. Any change in ownership must be immediately reported to the Office Park Manager and/or Board of Directors.

"Percentage Interest": A Unit's gross square footage as a proportion of the total square footage of all Units subject to assessment, for the purpose of calculating such Unit's proportionate share of the General Assessment or any Special Assessment, as more particularly described in Article VII.

"Person": An individual, corporation, partnership, trustee, or any other legal entity.

"Plat": Any Recorded subdivision plat for the Properties, as may be amended from time to time.

"Properties": The real property described on Exhibit "A," together with any additional property which is annexed as provided in this Declaration.

"Record," "Recording," or "Recorded": To file, the filing, or filed of record in the Office of Clerk of the Superior Court of Cherokee County, Georgia, or such other place which is designated as the official location for recording public land records.

"Restrictions and Rules": The initial restrictions and rules set forth in Exhibit "C," as they may be supplemented, modified, and repealed pursuant to Article IX.

**"Special Assessment"**: Assessments levied in accordance with Section 7.4.

**"Specific Assessment"**: Assessments levied in accordance with Section 7.5.

**"Supplemental Declaration"**: A Recorded instrument which subjects additional property to this Declaration pursuant to Article XII and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

**"Unit"**: That portion of the Properties intended for individual ownership and use, as shown or to be shown on a Plat and as further described in Section 2.1. The term shall refer to the land, if any, which is part of the Unit, as well as any improvements thereon.

## ARTICLE II PROPERTY RIGHTS AND INTERESTS

### 2.1. Units.

The Properties are planned to contain at least 90 Units, including one-story and two-story Units. The initial Units are more particularly shown and described on the Plat for Creekstone Office Park referenced in Exhibit "A." The remaining Units shall be created on the property described on Exhibit "B" or such other property as may be submitted to the Declaration by Supplemental Declaration, and described on future Plats. Each Unit includes that part of the structure which lies within the following boundaries:

(a) **Vertical Boundaries.** The perimetrical or vertical boundaries of each Unit shall be the plane formed by the interior side of the exterior surface material on the outside walls of the Unit. By way of illustration, and not of limitation, the Unit shall include the studs and framing of the exterior walls, but shall not include the exterior sheathing, brick, or other exterior finish surface and attachments thereto. With respect to common walls between Units, the perimetrical or vertical boundary of the Units served thereby shall be the center of such wall. Exterior doors and exterior glass surfaces, including, but not limited to, window and door frames serving the Unit shall be included within the Unit boundaries. Heating and air-conditioning systems serving a single Unit (including any part of any such system located outside the boundaries of the Unit) and appliances and plumbing fixtures within a Unit shall be considered to be a part of the Unit. Any pipe, duct, flue, or portion of a plumbing, mechanical, or electrical system serving a single Unit (including any part of any such system which protrudes through the roof or otherwise outside the boundaries of the Unit) shall be construed to be a part of the Unit.

(b) **Horizontal Boundaries.** The Units have no upper horizontal boundaries. The lower horizontal boundary of each Unit shall be the center of the earth and shall include the foundation, footings, concrete slab, and subflooring on which the lowermost story of the Unit is constructed.

The airspace, interior partitions, fixtures, and improvements lying within the above boundaries shall be a part of such Unit. Each Unit shall be conveyed as a separately designated and legally

described fee simple estate. Each Unit may be legally described by the identifying number or symbol as shown on the Plat.

## **2.2. Common Area.**

The Common Area shall include all parts of the Properties not located within a Unit's boundaries. On or before the date on which all Units are conveyed to Class "A" Members, Declarant shall convey the Common Area to the Association, and the Association shall be obligated to accept such conveyance for ownership and maintenance at the Association's expense. Each Owner and the Association shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area for any purposes for which the Common Area is intended, subject to:

- (a) this Declaration and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) any Board adopted rules regulating the use and enjoyment of the Common Area;
- (d) the right of certain Owners to the primary or exclusive use and enjoyment of such portions of the Common Area, if any, which are occupied by a portion of a Unit (for example, an air conditioning compressor serving a single Unit) or are otherwise designated as "Limited Common Area" on a Plat (for example, the sidewalks behind two-story Units shall be designated as Limited Common Area for the exclusive use of such Units);
- (e) the Association's right to dedicate or transfer all or any part of the Common Area; and
- (f) the Association's right to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, tenants, employees, and invitees, as applicable, subject to the Board's reasonable regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

## **2.3. No Partition.**

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

## **2.4. Condemnation.**

Each Owner shall be entitled to written notice if any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation by any authority having the power of condemnation or eminent domain. The award made for such taking shall be payable to the Association for such purposes as the Board shall determine.

## ARTICLE III MEMBERSHIP AND VOTING RIGHTS

### 3.1. Function of Association.

The Association shall be the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcing the Governing Documents. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration. The Association shall perform its functions in accordance with the Governing Documents and Georgia law.

### 3.2. Membership.

Every Owner shall be a Member of the Association. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the By-Laws. All co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners and Members. The membership rights of any Owner which is not an individual may be exercised by any officer, director, partner, or trustee, or other individual who is designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

### 3.3. Voting.

The Association shall have two classes of membership, Class "A" and Class "B". The Class "B" membership shall terminate upon Declarant's sale or other conveyance of 90 Units to Class "A" Members and the expiration of Declarant's right to annex additional property as set forth in this Declaration. Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit it owns, if any. Such Class "A" votes shall be allocated to Declarant in the same manner as described in subsection (a) above. The effective date of this December 31, 2007, when control was ceded to the Creekstone Office Park Association and its duly elected Board of Directors. Class "B" shares no longer exist.

Class "A". Class "A" Members shall be all Owners.. Each Class "A" Member who is the Owner of a one-story Unit shall have one vote for each such Unit in which he or she holds the interest required for membership under Section 3.2. Each Class "A" Member who is the Owner of a two-story Unit shall have two votes for each such Unit in which he or she holds the interest required for membership under Section 3.2. Regardless of the number of votes allocated to a Unit, only one Class "A" Member may exercise the vote(s) for any Unit. In any situation where there is more than one Owner of a Unit, the vote(s) for such Unit shall be exercised as the co-Owners determine among themselves and advise the

Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote(s) shall be suspended if more than one Person seeks to exercise it.

## **ARTICLE IV RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

### **4.1. Common Area.**

The Association, subject to the Owners' rights set forth in this Declaration, shall manage and control the Common Area (which shall consist of, but not be limited to, any entry feature serving the Properties, street lights, parking areas, streets, sidewalks, landscaping and buffer areas, and common signage) and other improvements thereon, and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the By-Laws and consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

### **4.2. Personal Property and Real Property for Common Use.**

The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the Properties, personal property, and leasehold and other property interests. The Association shall accept and maintain such property at its expense for the Members' benefit, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

### **4.3. Enforcement.**

The Association may impose sanctions for violating the Governing Documents in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote. In addition, the Association may exercise self-help to cure violations and may suspend any services it provides to any Unit Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action, which shall be a Specific Assessment against the Unit.

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

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

#### **4.4. Implied Rights; Board Authority.**

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

#### **4.5. Indemnification.**

The Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorneys' fees, reasonably incurred 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 he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Georgia law.

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

#### **4.6. Security.**

Declarant or the Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. The Association and Declarant shall not in any way be considered insurers or guarantors of security within the Properties, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

The offering of pre-wired security installation in a Unit by Declarant shall not create any duty or liability for the effectiveness, operation, or maintenance of such system. No representation or warranty is made that any fire protection system, burglar alarm system, or other security system or measures, including any mechanism or system for limiting access to the Properties, cannot be

compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and understands, and covenants to inform its tenants and all occupants of its Unit, that Common Area lighting is not provided for security purposes and provides no guarantee of safety or security within the Properties. Each Owner acknowledges and understands, and covenants to inform its tenants and all occupants of its Unit, that the Association, its Board of Directors and committees, and Declarant, are not insurers of safety and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

#### **4.7. Conveyance or Encumbrance of Common Area.**

The Association may transfer or encumber portions of the Common Area. Such a transfer or encumbrance shall require the affirmative vote or written consent, or a combination thereof, of a majority of the Class "A" Members.

#### **4.8. Provision of Services.**

The Association may provide, or provide for, services and facilities for the Members and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the General Assessment if provided to all Units. By way of example, such services and facilities might include marketing and promotional services, pest control service, security, transportation, fire protection, utilities, trash collection, and similar services and facilities.

Nothing in this Section shall be construed as a representation the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

#### **4.9. Parking Areas.**

To comply with the Americans with Disabilities Act (ADA), the Board may reserve a number of parking spaces for handicapped parking only. With the exception of such ADA-reserved spaces, no other spaces shall be assigned to or reserved for the exclusive use of any specific Owners, tenants, patrons, guests, or invitees. The Board shall be authorized to promulgate rules or restrictions relating to parking rights, parking spaces, or parking areas, including, but not limited to, rules or restrictions which allocate parking spaces, establish parking time limits, or prioritize users during high-traffic periods. Notwithstanding the dispute resolution requirements of Article XIII, the Board shall resolve all parking-related disputes. The Board's findings and decisions regarding parking-related disputes shall be final and binding on all parties.

## ARTICLE V MAINTENANCE

### 5.1. Owner's Responsibility.

Except as provided in Section 5.2, the maintenance and repair of a Unit shall be the responsibility of the Unit Owner. The Owner shall maintain every portion of the interior framing of the Unit, from, and including, the studs inward. Each Owner shall also maintain the doors and windows of the Unit. In addition, each Unit Owner shall be responsible for maintaining that portion of the Common Area upon which mechanical equipment (*e.g.*, HVAC units) serving only his or her Unit is placed. Any pipe, duct, flue, wire, or any portion of any other mechanical or electrical system which serves only a single Unit (including any part of any such system which protrudes through the roof or a wall and the area affected by such protrusion) shall be maintained by the Owner of such Unit.

Owners shall perform their maintenance responsibilities and keep all portions of their Units in good repair in a manner consistent with the Community-Wide Standard. Pursuant to Article VIII, the Owner must obtain the approval of Declarant or the Association, as appropriate, for any maintenance, repair, or replacement (whether within or outside of the Unit) which modifies the exterior appearance of the Unit or any portion of the Common Area, including, without limitation, windows, doors, and entrance ways.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibility and assess all costs against the Unit and the Owner as a Specific Assessment. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

### 5.2. Association's Responsibility.

The Association shall maintain and keep in good repair, in a manner consistent with the Community-Wide Standard, the Area of Common Responsibility. There are hereby reserved to the Association easements throughout the Properties, including structures, as necessary for the Association to fulfill all of its maintenance responsibilities.

The Area of Common Responsibility shall include all landscaping, entrance signage and features, private streets or roads, parking spaces, and other parking areas within the Properties. Except for windows and doors, the Association shall maintain all exterior building surfaces and materials, including building entry ways and stoops, siding, and trim, and all pipes, ducts, flues, wiring, and other portions of mechanical and electrical systems which serve more than one Unit. The Association also shall maintain the non-structural components of the roofs (*e.g.*, shingles, decking, and other surface roofing materials); provided, all other portions of the roof system (*e.g.*, trusses), and any vents, fans, plumbing stacks, or other items attached to or protruding through the roof shall be the maintenance responsibility of the Unit Owner being served by such systems or items. In addition, the Association shall maintain all seals, sealant, caulking, roof sealant, and other materials used to create a weatherproof seal on the exterior surfaces of all buildings, including seals around or between



components which are the Unit Owners' maintenance responsibility (*e.g.*, windows, doors, stacks, etc.) and components which are the Association's maintenance responsibility (*e.g.*, roof shingles, brick, trim, etc.).

Except as provided above, the Association also shall maintain the Limited Common Area and assess such costs against the benefited Units as a Specific Assessment.

The Association may maintain other property which it does not own if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association, in the exercise of its business judgment, may bind the Association and the Owners through contractual arrangements or covenants to share costs with the owner(s) of any adjacent property under which one of the parties maintain shared property or provides mutually beneficial services and the cost of such maintenance or services is allocated between the parties.

The cost of maintaining the Area of Common Responsibility shall be a Common Expense allocated among all Units as part of the General Assessment. Notwithstanding the foregoing, the Board may, within its sole discretion, allocate the expense of maintenance, repair, and replacement which benefits one or more, but less than all, Units as a Specific Assessment in accordance with the benefit so received by such Unit(s).

### **5.3. Standard of Performance.**

All maintenance shall be performed in a manner consistent with the Community-Wide Standard and the Governing Documents. Maintenance shall include the responsibility for repair and replacement as necessary. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

### **5.4. Party Walls.**

Each wall built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party wall. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners whose Units adjoin the party wall. Owners shall have easements as may be reasonably necessary over the Common Area and the adjacent Unit to repair and maintain the party wall.

If a party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance or repaired out of insurance proceeds, the Owners benefiting from such wall shall be responsible for the cost of its restoration in equal proportions. However, such contribution obligations shall not prejudice the right to call for a larger contribution from a particular Owner under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title. Any dispute arising concerning a party wall shall be handled in accordance with the provisions of Article XIII.

## ARTICLE VI INSURANCE AND CASUALTY LOSSES

### 6.1. Association Insurance.

(a) Required Coverage. The Association shall obtain and continue in effect the following types of insurance, if reasonably available at a reasonable cost, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(i) blanket property insurance covering the full replacement cost of all structures on Units (exclusive of improvements and betterments made by Owners) and all insurable improvements on the Area of Common Responsibility, regardless of ownership;

(ii) commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf;

(iii) workers' compensation insurance and employers' liability insurance, if and to the extent required by law;

(iv) directors' and officers' liability coverage;

(v) fidelity insurance covering all Persons responsible for handling Association funds, such policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) such additional insurance as the Board, in its business judgment, determines advisable.

(b) Policy Requirements. On a periodic basis, the Association shall arrange for a review of the sufficiency of the Association's insurance coverage. The review shall be performed by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Woodstock area.

All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association.

The policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense except as provided below and provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.23 of

the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may levy the full amount of such deductible as a Specific Assessment against such Owner(s) and their Units.

- Coverage of the deductible shall be contingent upon the Owner(s) having current liability coverage in effect as required by the by-laws. Failure to have current coverage shall result in the Owner(s) being responsible for the deductible up to a maximum of \$2,500.
- In the event that direct liability cannot be assessed or determined for the damage, such as damage to an air conditioning unit, the responsibility for the deductible may be denied or limited to 50%, as determined by the Board, as a Common Expense. For example: If an air conditioner is damaged and it cannot be determined whether the damage was caused by a power surge (responsibility of the owner) or by lightening (responsibility of the COPA), the responsibility to repair or replace the unit shall be shared between the Owner(s) and their insurance, if any, and the COPA Master Policy.

All insurance coverage obtained by the Board shall not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually, contain an inflation guard endorsement, and include an agreed amount endorsement, if the policy contains a co-insurance clause.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the Association's name, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. The Owner(s) or their personal casualty coverage on the unit is responsible for paying for or the repairing of any improvements, build outs or upgrades and for the cost of any damage or repairs to the interior of the unit from the studs to the interior, including the floors and painting of the walls.

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

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

## **6.2. Owners' Insurance.**

By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to maintain property insurance covering consequential damages to such Owner's Unit, any other Unit, or the Area of Common Responsibility upon which the Association maintains property insurance and damage caused by such Owner's negligence, the Owner's failure to maintain the

Unit, or any other casualty within the Unit which causes damage to the Units or Area of Common Responsibility. The Owner shall be liable to pay any such costs which are not covered by insurance proceeds. Each Owner is responsible for insuring the contents of his or her Unit.

Creekstone Office Park Association should be included as Named Additional Insured on each unit owner's liability policy. The value of each Unit Owner's liability coverage should be a minimum of \$1,000,000. A copy of your insurance certificate is to be provided to the Creekstone Office Park Association, who is to be listed as a named payee.

In the event of damage to an adjoining unit, the responsibility for such damages may be the responsibility of the unit owner causing the damage and most claims will require some coordination of benefits between the two policies, i.e. Creekstone Office Park Policy and the individual unit owner(s) policy(ies).

Effective January 1, 2012, a \$50 monthly assessment per unit will be due in addition to your monthly CAM Fees for failure to maintain and provide proof of liability coverage on each unit that you own. Each Unit Owner must provide a copy of their renewal or updated coverage whenever there is a change in insurance carrier. Liability coverage is required whether or not the unit is leased or owner occupied. Owners are responsible for their own arrangements with renters with respect to liability coverage and CAM fees.

## ARTICLE VII ASSESSMENTS

### 7.1. Creation of/and Obligation for Assessments.

(a) Purposes and Types. There are hereby created, and the Association is hereby authorized to levy, assessments for the Association's Common Expenses. There shall be three types of assessments: (a) General Assessments as described in Section 7.3; (b) Special Assessments as described in Section 7.4; and (c) Specific Assessments as described in Section 7.5. Each Owner covenants and agrees to pay these assessments.

(b) Personal Obligation and Lien. All assessments, together with interest (computed from the due date of such assessment at the maximum rate allowed under Georgia law), late charges established by Board resolution, costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit and also shall be the personal obligation of the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

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

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may, but shall not be obligated to, provide discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. The General Assessment shall be an annual assessment due and payable in advance on the first day of each fiscal year; provided, the Board may by resolution permit monthly installments. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

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

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with Declarant or other entities for payment of Common Expenses.

**7.2. Declarant's Obligation for Assessments.**

This section is no longer applicable.

**7.3. Computation of General Assessments.**

At least 30 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, which may include a reasonable reserve fund. By way of example, and not of limitation, the Common Expenses shall include the cost of maintaining and insuring the Area of Common Responsibility, expenses relating to commonly metered water and sewer service, and other services and costs benefiting all Units.

The amount of the General Assessment for each of the respective Units shall be based upon such Unit's Percentage Interest. A Unit's Percentage Interest shall be calculated by dividing the gross square feet of the Unit by the total square feet of all Units subject to assessment under this Article. The initial plans anticipate that one-story Units shall contain 1,141 square feet and two-story Units shall contain 2,282 square feet. Variations to such plans shall be indicated by amendment to this Declaration. As illustrated below, each Unit's General Assessment shall be determined by multiplying the Unit's Percentage Interest by the total amount of the budget.

Annual General Assessment of Unit	=	Total Amount of Common Expense Budget	X	<u>Gross Square Feet of Unit</u> Total Square Feet of All Units Subject to Assessment
-----------------------------------	---	---------------------------------------	---	------------------------------------------------------------------------------------------

The assessments shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses.

The Board shall send a copy of the final budget and notice of the amount of the General Assessment for the upcoming year to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall automatically become effective unless disapproved at a meeting by 67% of the total vote of the Class "A" Members in the Association. The Association shall not be obligated to call a meeting for such purpose. In the event the budget for any year is disapproved by the Members, the budget and assessments in effect for the last year for which an assessment was made shall remain in effect.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

#### **7.4. Special Assessments.**

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments shall be effective only upon the approval of a majority of the Class "A" Members in the Association. Special Assessments shall be payable in such manner and at such times as the Board determines, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Special Assessments shall be levied against each Unit in accordance with the Unit's Percentage Interest, as described in Section 7.3.

#### **7.5. Specific Assessments.**

The Association shall have the power to levy Specific Assessments against a particular Unit to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this Section.

The Association may also levy a Specific Assessment to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner, whether pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants or otherwise. Such assessments may be levied in advance of the provision of the requested benefit, item, or service as a deposit against charges to be incurred by the Owner. In addition, the Association may levy Specific Assessments against the benefited Units to cover the cost of maintaining any Limited Common Areas.

### **7.6. Lien for Assessments.**

The Association shall have a lien against each Unit to secure payment of all delinquent assessments, as well as interest, late charges, and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages are foreclosed under Georgia law.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While the Association owns a Unit following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its *pro rata* share (based upon Percentage Interest, as described in Section 7.3) of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

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

### **7.7. Capital Reserve Contributions.**

Each Owner, upon acquisition of a Unit, shall make a contribution to the Association's capital reserve fund in the amount equal to one-sixth (1/6) of the annual General Assessment for such Unit. Such amount shall not be considered a pre-payment or made in lieu of paying the General Assessment. The capital reserve contribution shall be paid by the purchaser at the closing of the transfer of the Unit and shall be a continuing lien upon the Unit until paid. Any amounts unpaid shall be subject to collection by the Association as provided above for the collection of all other assessments.

### **7.8. Date of Commencement of Assessments.**

The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which Declarant conveys the Unit to a Class "A" Member, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual General Assessment levied on each Unit, whether levied at the partial or full rate, shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

### **7.9. Budgeting for Reserves.**

The Common Expense budget adopted pursuant to Section 7.1 may include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense, which contribution shall be in addition to any capital reserve contributions made upon transfer of title to a Unit pursuant to Section 7.7. In addition, the Board, in the exercise of its business judgment, may apply any operating surplus from previous years to the capital reserve fund.

In determining the amount of any capital reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset. So long as the Board exercises business judgment, which may include relying in good faith on the advice of its accountants or other professional advisers in determining the amount or necessity of the reserve fund, the amount shall be considered adequate.

The Board may adopt resolutions regarding the expenditure of any reserve funds, including policies designating the nature of assets for which reserve funds may be expended.

## **ARTICLE VIII ARCHITECTURAL STANDARDS**

### **8.1. General.**

Modifications to Units may be made only in compliance with this Article and the Board's approval under Section 8.2. Any Owner may remodel, paint, or redecorate the interior of his or her Unit without approval. However, any modifications to portions of the Units which are visible from outside the structures (*e.g.*, windows, doors, signs, entrance ways, etc.) shall be subject to approval.

This Article shall not apply to Declarant's activities, nor to improvements to the Common Area by or on behalf of the Association.

### **8.2. Architectural Review.**

The Board shall be responsible for review of all applications for modifications under this Article. The Board may, from time to time, delegate any of its rights or responsibilities hereunder to one or more qualified Persons who may serve as a committee on the Association's behalf and who shall have full authority to act on the Board's behalf for all matters delegated. Upon the expiration or earlier surrender in writing of Declarant's right, the Board shall assume such right and power. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the committees in having any application reviewed by architects, engineers or other professionals. (Hereafter, the entity responsible for review and approval of applications shall be referred to as the "Reviewer").



### **8.3. Procedures.**

Owners shall submit an application describing in detail all proposed modifications to the Reviewer for review and approval (or disapproval). The Reviewer shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as committee members change over time. In the event that the Reviewer fails to approve or to disapprove in writing any application within 30 days after submission of all information and materials reasonably requested, the application shall be deemed approved.

### **8.4. No Waiver of Future Approvals.**

Approval of proposals, plans, specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans, specifications, drawings, or other matters subsequently or additionally submitted for approval.

### **8.5. Limitation of Liability.**

Review and approval of any application pursuant to this Article may be made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the integrity or soundness of approved modifications, nor for ensuring compliance with building codes and other governmental requirements. The Association, the Board, and any member of any of the foregoing shall not be held liable for any injury, damage, or loss arising out of the manner or quality of approved modifications to any Unit. In all matters, the Board and its members shall be defended and indemnified by the Association as provided in Section 4.5.

### **8.6. Enforcement.**

Any work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board, an Owner shall, at his or her own cost and expense, remove any nonconforming work and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board, or a designee shall have the right to remove the violation and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment.

Unless otherwise specified in writing by the Reviewer, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

The Board, as appropriate, may exclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, Declarant, the Association, and its officers or directors shall not be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the Reviewer's decisions.

## **ARTICLE IX RESTRICTIONS AND RULES**

### **9.1. Community-Wide Standard; Applicability; Effect.**

A Community-Wide Standard has been established for the Properties in order to enhance all Owners' collective interests, all subject to the Board's and the Members' ability to respond to changes in circumstances and desires within the community. The Properties are subject to restrictions governing individual conduct and uses of or actions upon the Properties, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, lessees, guests, and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of the Governing Documents.

### **9.2. Authority to Promulgate Restrictions and Rules.**

Initial Restrictions and Rules applicable to all of the Properties are attached as Exhibit "C" to this Declaration. Subject to the terms of this Article, Restrictions and Rules may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules. The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless, at a meeting of the Association, it is challenged and overturned by a majority vote of the total number of Class "A" Members in the Association. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the By-Laws.

(b) Alternatively, the Class "A" Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules by a majority vote of the total number of Class "A" Members in the Association.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the then current Restrictions and Rules to any requesting Member or Mortgagee.

(d) This Article is not intended to apply to rules and regulations relating to use and operation of the Common Area which the Board may adopt by resolution.

### **9.3. Owners' Acknowledgment.**

All Owners and occupants of Units are given notice that use of Units is limited by the Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the Restrictions and Rules may change from time to time.

### **9.4. Rights of Owners.**

Except as may be specifically set forth in this Declaration (either initially or by amendment) or in Exhibit "C," neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Similar Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Reasonable Basis. No rule may prohibit any activity, condition, or conduct unless there exists a reasonable basis for the enactment of such rule. For purposes of this subsection, reasonable basis may include, but not be limited to, restrictions as to time, place, and manner of activity or conduct, or concerns relating to safety, fair use of Common Area, cost, or aesthetics.

(c) Abriding Existing Rights. No rule shall require Owners to dispose of personal property which was kept in or on a Unit prior to the adoption of such rule and which was in compliance with all rules in force previous to such time, unless otherwise required to be removed by law; provided, the above shall apply to any Owner only for as long as he or she remains the Owner of the affected personal property or Unit. The rights granted under this subsection shall not run with title to any Unit.

(d) Allocation of Burdens and Benefits. No rule shall alter the financial obligations of the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for

use of the Common Area, or from denying use privileges to those who abuse the Common Area, violate Restrictions and Rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VII.

(e) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require the Association's consent for leasing or transfer of any Unit; provided, the Association may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of administering that lease or transfer.

(f) Signs. No signs, banners, symbols, or displays of any kind shall be displayed upon or visible from the outside of a Unit unless approved by the Reviewer.

(g) Commercial Use. The Properties shall be used only for commercial office purposes consistent with the Declaration and the zoning for the Properties.

The limitations in this Section shall apply to Restrictions and Rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 14.2.

## ARTICLE X EASEMENTS

### 10.1. Easements of Encroachment.

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

### 10.2. Easements for Utilities, Etc.

(a) The Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties, including the Units, to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining, and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; walkways and pathways; drainage systems; irrigation systems, street lights, and signage; and all utilities, including, but not limited to, water, sewers, telephone, gas, electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Association owns or within easements designated for such purposes on Plats. This easement shall include the right of the Association, and the designees of each (which

may include, without limitation, any governmental or quasi-governmental entity and any utility company) to enter and/or access the attic area and floor slab of each Unit for the purpose of installing, replacing, repairing, maintaining, monitoring, or operating any of the foregoing.

Association specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes.

(b) There is hereby reserved to Association the exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Association, in connection with the orderly development of the Properties. In addition, Association, on behalf of itself, its successors and assigns, licensees, and lessees, hereby reserves the right to grant easements over the Common Area, and to enter into reasonable agreements for use of portions of the Common Area, for the maintenance and operation of kiosks or other equipment or structures for commercial purposes as Association, in its sole discretion, deems appropriate and consistent with the scheme of development for the Properties. By way of example, but not limitation, a kiosk containing an automated bank teller machine for use by Owners, occupants, invitees, and members of the public may be a consistent, appropriate use of the Common Area.

Association shall have the right to enter into such lease agreements or other contractual arrangements as it deems appropriate, in its discretion, subject to appropriate maintenance obligations and reasonable payment as Association shall require, which agreements may be assigned to and bind the Association and the Owners. The general public may have non-exclusive easements of pedestrian and vehicular access, ingress, and egress over the streets and parking areas within the Properties as reasonably necessary to permit access to and use of such kiosks or other equipment or structures.

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. Except in an emergency, the exercise of these easements shall not extend to permitting entry into any Unit, nor shall it unreasonably interfere with the use of any Unit, without first affording reasonable notice to the Owner or occupant.

### **10.3. Easements for Stormwater Runoff.**

The Properties are subject to an easement in favor of the Association, as the owner of the Common Area, and the neighboring properties for the natural or controlled flow of stormwater across the Properties; provided, this Section shall not permit changes to the existing stormwater flow without the approval of the Association.

### **10.4. Right of Entry.**

The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents. Such right may be exercised by any Board member, the Association's officers, agents, employees, and managers, and all

police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the Association's right to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by Association or the Board. The rights granted pursuant to this Section shall not be exercised as to any Unit without first being granted permission by the Owner of the Unit; provided, no permission shall be required for emergency personnel acting in their official capacities to enter any Unit.

### **10.5. Easements to Serve Additional Property**

Association hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and Mortgagees, an easement over the Common Areas for the purposes of enjoyment, use, access, and development of any property which may be annexed hereto under Section 12.3, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas for construction of roads and for tying in and installation of utilities on such property. Association agrees that it, its successors or assigns, shall be responsible for any damage caused to the Common Areas as a result of vehicular traffic connected with development of such property. Association further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Association to share the cost of maintenance of any private roadway serving such property.

### **10.6. Association's Exclusive Right and Easement to Tap into Existing Utilities.**

Association hereby reserves for itself and its duly authorized agents, representatives, and assignees, the exclusive right to tap into, or permit adjacent property owners to tap into, existing utilities (including, without limitation, water, sewer, electric, telephone, and fiber optic systems), and the stormwater drainage and runoff systems or facilities within the Properties. Association shall have the exclusive right to assign or delegate its rights under this Section to any other Person or entity. Association and any duly authorized agents, representatives, and assignees shall have an easement over the Common Areas of the Properties to exercise their rights under this Section.

## **ARTICLE XI MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Properties.

### **11.1. Notices of Action.**

An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and

the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or occupant which is not cured within 60 days; or

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

**11.2. No Priority.**

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

**11.3. Notice to Association.**

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

**ARTICLE XII ASSOCIATION'S RIGHTS**

**12.1. Assignment.**

Any or all of the special rights and obligations of Association set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which Association has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Association and duly Recorded in the public records.

**12.2. Easements.**

Association may maintain and carry on within any Unit or upon portions of the Common Area such facilities and activities as, in Association's sole opinion, may be reasonably required, convenient, or incidental to the marketing and sale of Units, including, but not limited to, business offices, signs, and sales offices. Association shall have an easement for access to and use of such facilities.

Association and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

### **12.3. Annexation; Additional Covenants.**

Any time within 5 years after the Recording of this Declaration, Association shall subject to the provisions of this Declaration the property described in Exhibit "B." Such property shall be subjected following the Recording of a Plat describing Units thereon and may be submitted in multiple phases. In addition, Association may, but shall not be obligated to, subject to the provisions of this Declaration any property lying and being adjacent to the Properties, provided the development of such property is consistent with the general scheme of development established for the Properties.

Annexation shall be accomplished by Recording a Supplemental Declaration describing the property being annexed. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Association. Any such annexation shall be effective upon the Recording of such Supplemental Declaration, unless otherwise provided therein.

Association may unilaterally amend this Declaration, so long as it has a right to annex additional property, for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided that such withdrawal is not contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the owner of the property being withdrawn (if not Association) and any such owner shall join in the execution of the amendment to evidence his or her consent. Upon request of Association, the Association shall consent to withdrawal of Common Area in accordance with this Section.

Association may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than Association. Any Supplemental Declaration submitting additional property to this Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to such additional property in order to reflect the different character and intended use of such property.



## **ARTICLE XIII DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

### **13.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.**

The Association, Association, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances, or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances, or disputes arising out of or relating to the interpretation, application, or enforcement of the Governing Documents (collectively "Claim(s)"), except for those Claims made exempt under Section 13.2, shall be resolved using the procedures set forth in Section 13.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

### **13.2. Exempt Claims.**

The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 13.3:

- (a) any suit by the Association against any Bound Party to enforce the provisions of Article VII (Assessments);
- (b) any suit by the Association to obtain a temporary restraining order or other equitable remedy in order to enforce the covenants or maintain the status quo and preserve the Association's ability to enforce the provisions of Article VIII (Architectural Control) and Article IX (Restrictions and Rules);
- (c) any suit between Owners, which does not include Association or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (d) any suit in which any indispensable party is not a Bound Party; and
- (e) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 13.3(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 13.3, with the consent of all parties to the dispute.

### **13.3. Mandatory Procedures for All Other Claims.**

All Claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (ii) the basis of the Claim (*i.e.*, the provisions of the Governing Documents or other authority out of which the Claim arises);
- (iii) Claimant's proposed remedy; and
- (iv) that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice described in Section 13.3(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Cherokee County area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys fees, and each Party shall share equally all fees charged by the mediator.

### Alternative Dispute Resolution Process

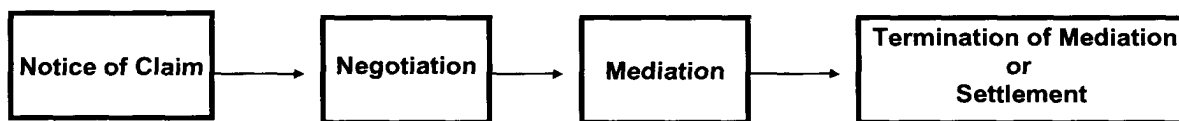


Diagram 13.1 - Alternative Dispute Resolution Process

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

## ARTICLE XIV GENERAL PROVISIONS

### 14.1. Duration.

This Declaration shall have perpetual duration. If, however, Georgia law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated by a Recorded instrument signed by a majority of the Owners. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

### 14.2. Amendment.

(a) By Association. So long as Association owns any Unit for sale, it may unilaterally amend this Declaration:

- (i) To bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination;
- (ii) To enable any title insurance company to issue title insurance coverage;
- (iii) If such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans; or

(iv) If such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans.

However, any such amendment shall not adversely affect the title to any Owner's Unit unless any such Unit Owner shall consent thereto in writing.

Further, Association may unilaterally amend this Declaration for any other purpose; provided, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder, nor shall it adversely affect title to any Unit without the Owner's consent.

(b) By the Owners. In addition to subsection (a), this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of 67% of the total vote of the Class "A" Members in the Association and Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

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

Any amendment shall become effective upon Recording in the public records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

### **14.3. Severability.**

Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

### **14.4. Litigation.**

Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 67% of the total Class "A" votes in the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) imposition and collection of assessments as provided in Article VII; (c) proceedings involving challenges to *ad valorem* taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) claims initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures,

challenges to *ad valorem* taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) claims initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article XIII, if applicable.

**14.5. Compliance.**

Every Owner and occupant of any Unit shall comply with the Governing Documents. Subject to the terms of Article XIII, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

IN WITNESS WHEREOF, the undersigned Board of Directors have executed the Covenants and Bylaws as restated in their entirety this 10<sup>th</sup> day of October, 2012.

**CERTIFICATION OF COVENANTS**

**CREEKSTONE OFFICE PARK OWNERS ASSOCIATION, INC. [SEAL]**

By: *Albert E. Cain*  
Albert E. Cain, Office Park Manager and  
Prior Co-managing Member/Declarant

By: *Thomas L. Rainey*  
Thomas L. Rainey, Director and Prior  
Co-managing Member/Declarant

By: *Gloria I. Gillespie*  
Gloria I. Gillespie, President COPA

By: *Herman Kistler*  
Herman Kistler, Secretary/Treasurer

Signed, sealed, and delivered this 10<sup>th</sup> day of October, 2012, in the presence of:

*Ruby Pittman*  
WITNESS

*Andrea Ghavami*  
NOTARY PUBLIC



**EXHIBIT "A" - THE PROPERTIES**

*THIS SECTION IS LEFT BLANK INTENTIONALLY.*

COPY

**EXHIBIT "B" - LAND SUBJECT TO ANNEXATION**

LAND SUBJECT TO ANNEXATION

THIS SECTION IS LEFT BLANK, INTENTIONALLY.

COPY

## **EXHIBIT "C" – CREEKSTONE RULES AND RESTRICTIONS**

### **1.1. Initial Restrictions and Rules**

The following restrictions shall apply to all of the Properties unless and until such time as they are amended, modified, repealed, or limited by rules of the Association adopted pursuant to Article IX of the Declaration.

### **1.2. Prohibited Activities**

The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

1. Parking any vehicles anywhere except in areas specifically designated for parking. Only vehicles able to be parked within the designated boundaries of a single parking space shall be permitted on the Properties, except that other vehicles may be permitted for delivery or moving purposes and only while loading or unloading is taking place. The Board may assign specific parking spaces for construction, service, and delivery vehicles as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Areas. Motor homes, recreational vehicles, boats or other watercraft, trailers, stored vehicles, or inoperable vehicles are prohibited within the Properties for any length of time. No vehicle may be parked on the Properties for a period exceeding 48 consecutive hours.
2. Raising, breeding, or keeping animals, livestock, or poultry of any kind;
3. Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;
4. Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;
5. Outside burning of trash, debris, or other materials or the placement or storage of trash outside of a Unit in any area other than the area within the Properties specifically designated for trash collection. All occupants of Units shall regularly remove all rubbish, trash, and garbage from the Unit so as not to allow it to accumulate to excessive levels therein. Trash dumpsters are provided on the Common Area for ordinary trash, rubbish, and garbage (other than medical waste, and hazardous, explosive, or flammable chemicals or materials). Otherwise, it shall be



the responsibility of the occupants of each Unit to cause its extraordinary trash or hazardous material prompt removal from the Properties. It shall also be the responsibility of the occupants of each Unit to dispose of their medical waste, and hazardous, explosive, or flammable chemicals or materials promptly and in a proper manner off of the Properties;

6. Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;
7. Any erection or placement of anything, permanently or temporarily, on the outside portions of the Properties, whether such portion is improved or unimproved. This shall include, without limitation, any apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind, permanently or temporarily, except that a satellite dish no larger than one-meter in diameter may be permitted with the approval of the Board in accordance with Article VIII of the Declaration; and
8. Any erection or placement of signs on the exterior of any Unit, except that approved lettering may be placed on doors to identify the business of the Owner or occupant of the Unit. Each Owner or occupant of a Unit shall be permitted to be identified on a sign maintained by the Association on the Common Area. The Board and Declarant shall have the right to determine what, if any, signs shall be permitted on the Common Area, except as may be permitted by the Board in its discretion, no flags, banners, or similar items shall be displayed or posted within the Properties.

### **1.3. Prohibited Uses**

In addition to uses which are inconsistent with applicable zoning or are prohibited or restricted by other Recorded covenants, conditions, restrictions, or easements, the following uses are prohibited within the Properties:

1. Businesses selling or providing automobile parts, services (such as car wash, detailing, oil change, tune up, etc.), repairs, or fuel;
2. Businesses engaged in on-site sales, rental, or leasing of automobiles, trucks, campers or other vehicles, whether new or used;
3. Businesses advertising and primarily engaged in providing check-cashing services, loans, or consumer credit to the public other than in connection with the purchase of the goods or services of such business, except that state or federally chartered banks and similar regulated financial institutions shall be permitted;
4. Pawn shops;

5. fast-food or similar establishments providing "take out," delivery, or drive-through window service, except that coffee or sandwich shops without drive-through window service shall be permitted within a building primarily devoted to another permitted use;
6. Retail establishments primarily selling beer, wine, and/or liquor;
7. Bars, dance clubs, and similar establishments whose gross income is derived primarily from the sale of beer, wine, and liquor;
8. Any warehouse or industrial use, except that nothing herein shall prohibit any use which is part of and typically associated with the operation of a medical office, clinic, or similar medical or veterinary facility;
9. Self-serve laundry facilities;
10. Businesses primarily engaged in the rental of personal property other than medical equipment to the public (*e.g.*, video tapes, tools, etc.);
11. Dime stores, dollar stores, factory outlet stores, and similar retail establishments specializing in the sale of goods at discount prices;
12. "Warehouse" type retail establishments;
13. Consignment shops, thrift stores, and other establishments primarily engaged in the sale of used clothing, furniture, or other used goods;
14. Flea markets and fire and bankruptcy sale operations operated on an ongoing basis as a business; and
15. Businesses engaged in the sale of adult-oriented materials, or in the provision of entertainment featuring topless or nude performers, or in the sale of lingerie modeled by live models, or similar sexually-oriented businesses.

#### **1.4. Sale or Lease**

Any Unit Owner may sell or lease his or her Unit, provided such Owner shall provide the Board with written notice of such transaction, and the identity of the purchaser or lessee, in advance of the closing of the sale or the commencement of the lease term. The Owner must make the Governing Documents available to the purchaser or lessee along with any rules and regulations currently in effect.

Within seven days after taking title to a Unit, the new Owner shall give written notice to the Board of Directors of his or her ownership of the Unit. Upon failure of a Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Unit and

the Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

Any lease of a Unit shall be deemed to contain the following provisions, whether or not expressly therein stated:

1. The lessee shall comply with all provisions of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto and shall be responsible for all violations thereof, including any fines levied by the Association. If a fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit.
2. Any violation of the Declaration, By-Laws, or rules and regulations adopted pursuant thereto by the lessee is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Unit.
3. When a Unit Owner who is leasing his or her Unit fails to pay any annual or special assessment or any other charge for a period of more than 30 days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. 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.

**EXHIBIT "D" - CREEKSTONE OFFICE PARK OWNERS ASSOCIATION  
BYLAWS**

COPY

*As restated and updated November 1, 2012*

**BY-LAWS**  
**OF**  
**CREEKSTONE OFFICE PARK OWNERS ASSOCIATION, INC.**

**ARTICLE I NAME, PRINCIPAL OFFICE, AND DEFINITIONS**

**1.1. Name.**

The name of the corporation is Creekstone Office Park Owners Association, Inc. (the "Association"), which shall also be referred to as COPA.

**1.2. Principal Office.**

The principal office of the Association shall be located at 205 Creekstone Ridge, Woodstock, GA in Cherokee County, Georgia. The Association may have such other offices, either within or outside the State of Georgia, as the Board of Directors may determine or as the affairs of the Association may require.

**1.3. Definitions.**

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Creekstone Office Park, as Recorded, as it may be amended (the "Declaration"), unless the context indicates otherwise.

**ARTICLE II. ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM,  
VOTING AND PROXIES**

**2.1. Membership.**

The Association shall initially have two classes of membership, Class "A" and Class "B," as set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference. Effective January 1, 2008, the only Class of Membership is "A".

**2.2. 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, either within the Properties or as convenient as is possible and practical.

**2.3. Annual Meetings.**

The first meeting of the Association, whether a regular or special meeting, shall be held within one year from the date of incorporation of the Association. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board.

**2.4. Special Meetings.**

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members holding at least 25% of the total Class "A" votes in the Association.

**2.5. Notice of Meetings.**

Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the person or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at the address for such Member appearing on the records of the Association, with postage prepaid.

**2.6. Waiver of Notice.**

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or the Member's proxy shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

**1.5.**

**2.7. Adjournment of Meetings.**

If any Association meeting cannot be held because a quorum is not present, Members or their proxies holding a majority of the votes represented at such meeting may adjourn the meeting to a time not less than 5 or more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members represented at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

**2.8. Voting.**

The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

**2.9. Proxies.**

At all meetings of Members, each Member may vote in person (if a corporation, partnership, or trust, through any officer, director, partner, or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Georgia law. All proxies shall be in writing specifying the Unit(s) for which it is given, signed by the Member or its duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to any meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Unit for which it was given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

**2.10. Majority.**

As used in these By-Laws, the term "majority" shall mean those votes, Owners, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

**2.11. Quorum.**

Except as otherwise provided in these By-Laws or in the Declaration, the presence, in person or by proxy, of Members holding at least 25% of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association.

**2.12. Conduct of Meetings.**

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

**2.13. Action Without a Meeting.**

Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote thereon. Such consent shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

**ARTICLE III BOARD OF DIRECTORS**

**1.6. A. NUMBER, POWERS, MEETINGS - Composition and Selection.**

**3.1. Governing Body; Composition.**

The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. The directors shall be Members or occupants; provided, no Owner and occupant representing the same Unit may serve on the Board at the same time. An "occupant" shall be any natural person 18 years of age or older who is currently operating a business out of a Unit within the Properties. In the case of a Member which is not a natural person, any officer, director, partner, employee, or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member. The initial Board shall consist of those directors identified in the Articles of Incorporation.

**3.2. Number of Directors.**

The Board shall consist of six directors plus the Office Park Manager, as provided in Sections 3.3 and 3.5 below.



### **3.3. Directors During Class "B" Control Period.**

Class B shares no longer exist after 2007 following the Declarant deeding the common areas to the COPA.

### **3.4. Nomination and Election of Directors.**

Directors shall be nominated from the floor at the meeting in which the election is to take place or by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

Each Owner may cast the entire vote assigned to his or her Unit for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

### **3.5. Election and Term of Office.**

Directors shall be elected for two-year terms as they determine among themselves, so that directors will complete their terms in alternating years. Upon the expiration of the term of office of each director elected by the Class "A" Members, a successor shall be elected to serve a term of two years. The directors elected by the Class "A" Members shall hold office until their respective successors have been elected.

### **3.6. Removal of Directors and Vacancies.**

Any director elected by the Class "A" Members may be removed, with or without cause, by Class "A" Members holding 67% of the votes in the Association. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three or more consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director elected by the Class "A" Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term.

## **1.7. B. Meetings.**

### **3.7. Organizational Meetings.**

The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

### **3.8. Regular Meetings.**

Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter. Notice of the time and place of a regular meeting shall be communicated to directors not less than four days prior to the meeting; provided, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

### **3.9. Special Meetings.**

Special meetings of the Board of Directors shall be held when called by written notice signed by the President or Vice President or by any two directors. The notice shall specify the 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: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; (d) facsimile; (e) electronic mail; or (f) telegram, charges prepaid. All such notices shall be given at the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four business days before the time set for the meeting. Notices given by personal delivery, telephone, facsimile, electronic mail, or telegraph shall be delivered, telephoned, faxed, emailed, or given to the telegraph company at least 72 hours before the time set for the meeting.

### **3.10. Waiver of Notice.**

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

### **3.11. Telephonic or E-Mail Participation in Meetings.**

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, or

email means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting. Similarly, action on a specific matter can be conducted via email and any voting done on such matter will be retained and shall constitute the presence in person at such meeting.

### **3.12. Quorum of Board of Directors.**

At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

### **3.13. Compensation.**

Directors shall not receive any compensation from the Association for acting as such. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

### **3.14. Conduct of Meetings.**

The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings recording all Board resolutions and all transactions and proceedings occurring at such meetings.

### **3.15. Notice to Owners; Open Meetings.**

Subject to the provisions of Section 3.16, 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 permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

### **3.16. Action Without a Formal Meeting.**

Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

## **1.8. C. Powers and Duties.**

### **3.17. Powers.**

The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By-Laws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things as are not directed by the Governing Documents or Georgia law to be done and exercised exclusively by the membership generally.

### **3.18. Duties.**

The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' business judgment, in depositories other than banks;
- (f) opening of bank accounts on behalf of the Association and designating the signatories required;
- (g) making or contracting for the making of repairs, additions, improvements, or alterations to the Common Area in accordance with the Declaration and these By-Laws;

- (h) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's enforcement obligations shall be limited in the manner set forth in the Declaration;
- (i) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate except that the Association shall not maintain flood insurance or be liable for any damages due to flood or earthquake or any damages specifically excluded by the Master Policy for events that are typically not covered by such insurance except as a special policy or rider;
- (j) paying the cost of all services rendered to the Association;
- (k) keeping books with detailed accounts of the receipts and expenditures of the Association;
- (l) making available to any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association, as provided in Section 6.4;
- (m) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties; and
- (n) indemnifying a current or former director, officer, or committee member of the Association to the extent such indemnity is required under Georgia law, the Articles of Incorporation, or the Declaration.

### **3.19. Management**

The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

### **3.20. Accounts and Reports.**

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) accounting and controls should conform to generally accepted accounting principles;

- (b) cash accounts of the Association shall not be commingled with any other accounts;
- (c) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association;
- (d) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
- (e) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report may be prepared, in the exercise of the Board's business judgment, on an audited, reviewed, or compiled basis, as the Board determines by an independent public accountant; provided, upon written request of any holder, guarantor, or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement.

### **3.21. Borrowing.**

The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner as provided for Special Assessments in Section 7.4 of the Declaration.

### **3.22. Right to Contract.**

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

### **3.23. Enforcement.**

In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable monetary fines, which shall constitute a lien upon the Unit of the violator, and to suspend an Owner's right to vote for violation of any duty imposed under the Governing Documents. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, tenant, employee, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided, if the fine is not paid by the occupant within the time period set by the Board, the fine shall be assessed against the Unit and the Owner thereof upon notice from the Association. The failure of the Board to enforce any provision of the Governing Documents shall not be deemed a waiver of the right of the Board to do so thereafter.

- (a) Notice. Prior to imposition of any sanction hereunder or under the Declaration, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a hearing is requested within 10 days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided, the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.
- (b) Hearing. If a hearing is requested within the allotted 10 day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.
- (c) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules) or, following compliance with the dispute resolution procedures set forth in Article XIII of the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed as trespass.

### **3.24. Owner(s) Liability Insurance Required**

Effective January 1, 2012, owners are required to maintain \$1 million dollars of liability insurance with Creekstone Office Park as a named insured. This requirement is pursuant to Section 6.2 of the Bylaws and is also required by Insurers of the Master Association Plan. While not required, owners are also responsible for securing appropriate insurance to cover any damages to the interior of the unit, regardless of cause. The failure to have personal insurance including Business Insurance, Hazard Insurance, and Flood Insurance shall be the responsibility of the unit owner.

A special assessment and administrative fee of \$50 a month (plus interest on any past due fees) is due for any month in which proof of liability insurance is not provided to the Association.

### 3.25. Interest and Penalties Effective July 1, 2012

The following policies were approved by unanimous vote by the Board of Directors effective July 1, 2012 following advance written notice on May 15 to the membership.

- (a) **Interest on Past Due CAM Fees:** The association may assess a fair rate of interest on any past due fees starting July 1, 2012. The initial rate shall be at 1% per month compounded. The Board reserves the right to waive interest in certain circumstances where the owner executes an agreement and/or personal guarantee to make scheduled payments on past due amounts in addition to their current CAM fees. Interest will commence once a unit owner is past due 60 days or more. This fee will commence as of July 1, 2012 on all delinquent accounts. The board reserves the right to waive certain fees or delinquent amounts in consideration of certain agreements and/or payments as may be negotiated with a unit owner.

On any property acquired by bankruptcy, foreclosure or at auction where there were delinquent unpaid CAM fees that were forfeited, CAM fees following such sale shall be subject to interest on all future delinquent CAM fees following the sale and the initial COPA fee assessed for new owners provided below.

- (b) **COPA Membership Fee/Special Reserve Assessment for New Owners:** The membership fee shall vary depending on the status of COPA Membership at time of closing and purchase of the unit. Participation in the COPA is mandatory and all owners are required to pay their portion of the Common Area Maintenance (CAM Fees), which will be billed monthly commencing with the first full month of ownership after payment of the Reserve Assessment fee:
- 1) Upon the sale or transfer of any unit which was in arrears on CAM Fees, the initial assessment to the new owner(s) shall be the **annual CAM fee up to a maximum of \$1,500 per unit payable in advance** at time of closing. Thereafter, the new owner shall be responsible for paying the monthly CAM fees, the same as any other unit.
  - 2) Any sale of a unit which is in good standing where there is no past due CAM Fee outstanding as of the closing or transfer date of the property; the COPA Membership Fee shall be \$500.
  - 3) All new owners will be asked to sign a "personal guarantee" of the CAM Fees to cover their portion of the insurance and water maintenance costs subject to attorney review and approval.
- (c) **No Pro-Ration of CAM Fees:** CAM fees are due from the owner of a unit for any portion of the month in which the unit is owned. In the event of any sale, transfer, foreclosure or other acquisition of a Creekstone Office Park Unit, the full month's CAM fees are due for that month by both the previous owner as well as the new owner, unless such fees are otherwise paid at closing. There shall be no pro-ration of the CAM fee by the new owners for the initial month of ownership, including those units which may be acquired due to foreclosure, short sale, or any other means.



- (d) **Lien on Insurance Claims:** In the event of an insurance claim involving any unit, any past due CAM fees for such unit(s) plus interest shall first be deducted from the proceeds of any insurance settlement. The owner will be responsible for paying any costs in excess of those paid by the Creekstone Office Park Umbrella policy (less past due CAM fees).
- (e) **Special Assessment for Failure to Maintain Liability Insurance:** Each unit owner is responsible for maintaining a liability policy in the amount of \$1 million, with Creekstone Office Park Association as a named payee. This policy is to cover damages to other Creekstone property as a result of negligence on the part of the unit owner. There shall be an additional CAM Assessment fee of \$50 a month for each month after January 1, 2012 that the owner fails to provide proof of such coverage. This fee shall be assessed and due as of the first day of each month.
- (f) **Association Lien:** The association reserves the right to place a lien against any property that is seriously in arrears with the CAM fees.

For purposes of this policy, the following definitions shall apply:

- **Association Insurance:** Is the blanket policy purchased by the Association that covers the repaid and/or replacement of any Creekstone Unit. This coverage does not cover any of the building's contents or interior improvements nor does it cover floods, earth quakes and certain other events that are typically excluded by such policies and that are only covered by special riders or policies, such as a Flood Insurance Policy. It is the responsibility of the Owner to purchase such coverages personally.
- **Past Due:** CAM fees are due as of the first day of each month. Any CAM fee is deemed to be past due if it is still outstanding as of 10<sup>th</sup> of each month.

## ARTICLE IV OFFICERS

### 4.1. Officers.

The officers of the Association shall be a President, Secretary, and Treasurer. The President and Secretary shall be elected from among the members of the Board; other officers may, but need not be, members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

### 4.2. Election and Term of Office.

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

#### **4.3. Removal and Vacancies.**

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

#### **4.4. Powers and Duties.**

The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

#### **4.5. Resignation.**

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

#### **4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc.**

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

#### **4.7. Compensation.**

Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.13.

### **ARTICLE V COMMITTEES**

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

## ARTICLE VI MISCELLANEOUS

### 6.1. Fiscal Year.

The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

### 6.2. Parliamentary Rules.

Except as may be modified by Board resolution, Robert's Rules of Order Newly Revised (the then current edition) shall govern the conduct of Association proceedings when not in conflict with Georgia law or the Governing Documents.

### 6.3. Conflicts.

If there are conflicts between the provisions of Georgia law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Georgia law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

### 6.4. Books and Records.

- (a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the rules of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.
- (b) Rules for Inspection. The Board shall establish reasonable rules with respect to:
- (i) notice to be given to the custodian of the records;
  - (ii) hours and days of the week when such an inspection may be made; and
  - (iii) payment of the cost of reproducing copies of documents requested.
- (c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

## 6.5. Notices.

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

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

## 6.6. Amendment.

These By-Laws may be amended by the Board of Directors; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

Amendments to these By-Laws shall become effective upon Recordation, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

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

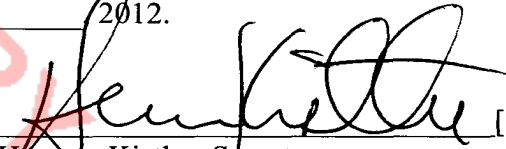
If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority so to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

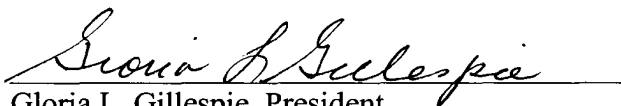
## CERTIFICATION OF BYLAWS

I, the undersigned, do hereby certify that I am the duly elected and acting Secretary of Creekstone Office Park Owners Association, Inc., a Georgia corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 10 day of October, 2012.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 10 day of October, 2012.

  
[SEAL]  
Herman Kistler, Secretary

  
Gloria L. Gillespie, President