
Declaration of Condominium for
THE ENCORE AT ETOWAH
A Condominium

AN AGE RESTRICTED COMMUNITY IN CONFORMANCE WITH THE SAFE HARBOR PROVISIONS OF THE HOUSING FOR OLDER PERSONS ACT OF 1995 (PUB.L. 104-76, 109 STATE. 787) (“HOPA”) AND THE REGULATIONS PROMULGATED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT IN FUTHERANCE OF THE GOALS OF THAT ACT, 24 CFR PART 100, SECTIONS 100.304-100.308 AND THE GEORGIA FAIR HOUSING LAW, O.C.G.A SECTIONS 8-3-200 ET SEQ.

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DECLARATION OF CONDOMINIUM FOR
THE ENCORE AT ETOWAH,
A CONDOMINIUM

This Declaration of Covenants, Restrictions and Easements for The Encore at Etowah, a Condominium, is made this _____ day of _____, 20____ by D3S, LLC, a limited liability company organized and existing under the laws of the State of Ohio (hereinafter referred to as “Declarant”).

WITNESSETH

WHEREAS, Declarant is the owner of all that tract or parcel of land which is located in Land Lot 809 of the 4th District, 3rd Section of Bartow County, Georgia, and being 13.43 acres, more or less, which is more particularly described on Exhibit “A” attached hereto and made a part hereof.

WHEREAS, Declarant desires to subject the real property described in Exhibit “A” hereto, including the improvements thereof, to the provisions of this Declaration and to the Georgia Condominium Act.

NOW THEREFORE, Declarant hereby declares that the real property described in Exhibit “A” of this Declaration, including the improvements located thereon, is hereby submitted and made subjected to the form of ownership set forth in the Georgia Condominium Act, and is hereby subjected to the provisions of this Declaration. By virtue of the recording of this Declaration, said property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the provisions of the Georgia Condominium Act and the covenants, conditions, restrictions, easements, assessments, and liens set forth in this Declaration, which are for the purpose of protecting the values and desirability of, and which shall run with the title to, the real property subject to this Declaration and shall be binding on all persons having any right, title or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors-in-title and assigns, and shall be for the benefit of all owners of the property subject to this Declaration.

ARTICLE ONE
Definitions

The terms defined in O.C.G.A. Section 44-3-71 shall have the meanings specified therein and wherever they appear in the condominium instruments unless the context otherwise requires. Specifically, the following terms have the following meanings:

Association. “Association” means The Encore at Etowah Condominium Association, Inc. (a non-profit, nonstock membership corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

Board. “Board” means the Board of Directors of the Association, designated as the governing body of the Association.

Bylaws. “Bylaws” means the Bylaws of the Association.

Commencement Date. “Commencement Date” means the date on which the first Unit is sold to a third party other than Declarant or the builder of such Unit.

Common Elements, Common Property and Limited Common Elements. “Common Elements” or “Common Property” means the property described in Exhibit “A” hereof, less and except the Units (together with any and all improvements now or hereafter located thereon) which are being conveyed simultaneously herewith to the Association for the common use and enjoyment of the Owners. “Limited Common Element” means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

Common Expenses. “Common Expenses” means all expenditures lawfully made or incurred by or on behalf of the Association together with all funds lawfully assessed for the creation and maintenance of the Association or the Common Elements thereof pursuant to the provisions of the condominium instruments. “Common Expenses” shall include, but shall not be limited to, insurance, maintenance for Common Elements, annual contracts for third party services related to the Common Elements, and the like.

Common Surplus. “Common Surplus” means the excess of all receipts of the Association collected on behalf of the Association including, but not limited to, assessments, rents, profits, revenues on account of the common elements, or any other source of income, over the common expenses.

Condominium Unit. “Condominium Unit” or “Units” means a structure situated upon a Lot intended for use and occupancy as a residence for a single family. Unit shall include (1) all portions of the land (the Lot) lying directly beneath the Unit and owned as a part of the structure described above and (2) all hardscape additions to the Lot, including but not limited to driveways, walkways (excluding sidewalks) and patios. A structure and the land owned as a part thereof (the Lot) shall not become a Unit until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a pre-requisite to the occupancy of such Unit and until the Lot and structure located thereon shall have been conveyed to a third party other than the builder thereof.

Declarant. “Declarant” means D3S, LLC (a limited liability company organized and existing under the laws of the State of Ohio) and its successors-in-title and assigns, provided any such successors-in-title or assigns shall acquire for the purpose of development or sale of all or any portion of the Units, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the “Declarant” hereunder by the grant of such conveyance, which grantor shall be the “declaration” hereunder at the time of such conveyance, provided, further, upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as “Declarant” hereunder shall cease.

Development. "Development" means The Encore at Etowah and all Units and Lots shown on a plat of the Development as recorded in Condominium Plat Book _____, Page _____, Bartow County, Georgia Records.

Development-Wide Standard. "Development-Wide Standard" means the standard of conduct, maintenance or other activity generally prevailing in the Development. Such standard may be more specifically determined by the Board and by committees required or permitted to be established pursuant to the declaration and Bylaws. Such determination, however, must be consistent with the Development-Wide Standard originally established by the Declarant.

Lot. "Lot" means any parcel of land shown upon a condominium plat recorded in the Office of the Clerk of the Superior Court of Bartow County, covering any portion of the Property, provided, however, that no portion of the Common Property shall ever be a Lot.

Member. "Member" means any member of the Association.

Membership. "Membership" means the collective total of all members of the Association.

Mortgagee. "Mortgagee" means any mortgage holder, its successors and assigns, so long as said mortgage holder holds fee title or a security interest in any Unit.

Occupant. "Occupant" means any person occupying all or any portion of a Unit for any period of time, regardless of whether such Person is a tenant or the Owner of such Unit.

Owner. "Owner" or "Unit Owner" means the record owner (including Declarant), whether one or more persons or entities, of a fee simple title to any Unit; provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Unit in fee simple if such loan were paid in full shall be considered the Owner.

Property. "Property" means the real property described in Exhibit "A" hereof.

Restrictions. "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

Structure. "Structure" means:

- (a) any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse, coop or cage, covered or uncovered patio, fence, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such lot; and
- (b) any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or

which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot.

ARTICLE TWO
Common Property

Convertible Space. The Condominium does not contain any convertible space.

Expansion of Condominium. The original plan for development calls for this Condominium to contain forty-two (42) detached residential units, unless modified as herein elsewhere provided, and is expandable beyond that amount.

Conveyance of Common Property.

- (a) The Declarant may from time to time convey to the Association or grant easements to the Association, at no expense to the Association and in accordance with this Section, real and personal property for the common use and enjoyment of the Owners (such real and personal property is hereinafter collectively referred to as "Common Property") and, to the extent set forth in this Declaration of Covenants, Restrictions, and Easements, the general public. The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property.
- (b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for preservation and for general use. Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this Article at any time prior to conveyance of such Common Property to the Association.
- (c) In addition to the property described in this Article, the Declarant may convey to the Association such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.
- (d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.

Owner's Right to Enjoyment. Every Owner of a Unit shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners of Units to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Article is subject to suspension by the Association as provided in these Declarations.

Rights of the Association. The rights and privileges conferred in Article hereof shall be subject to the right, and where applicable, the obligation, of the Association, acting through the Board to:

- (a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property;
- (b) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the association's property, including Common Property and revenues from assessments, user fees and other sources; and provided, however, that, during the period when the Declarant has the right to appoint members of the Board, the Association shall not deed, grant or convey to anyone any mortgage, deed to secure debt or other security interest, on or in Common Property constituting real estate without approval by Declarant and a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association;
- (c) grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;
- (d) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and, subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority.
- (e) charge reasonable fees in connection with the admission to and use of facilities or services by Members and non-members; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;
- (f) suspend, pursuant to these Declarations, the voting rights of any Member and the right of enjoyment granted or permitted herein;
- (g) sell, lease or otherwise convey all or any part of its properties and interests therein;
- (h) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof; and,

- (i) maintain any and all landscaping treatments previously installed by the Declarant, to the extent that such landscaping is not otherwise maintained by the appropriate county and/or municipal entity having jurisdiction over the roads for Bartow County, Georgia.

Types of Common Property. At the time of the conveyance of any real property or grant of easement by Declarant to the Association to be used as Common Property, Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of the Members of the Association, be used for any different purpose or purposes without the prior written consent of Declarant.

Delegation of Use. Any Owner may delegate to the members of his family or his tenants who reside on a Lot, in accordance with the By-Laws, his right to use and enjoy the Common Property.

ARTICLE THREE Use Restrictions

Fair Housing Acts. The provisions of these Declarations are intended to be consistent with, and are set forth in order to comply with the Fair Housing Act, 43 U.S.C. Section 3601, et seq., and O.C.G.A. Section 8-3-205, as such laws may be amended from time to time and such regulations adopted pursuant to such laws (collectively the “Fair Housing Acts”), regarding discrimination based on familial status except as allowed by the safe harbor provisions of the Housing for Older Persons Act of 1995 (Pub. L. 104-76, 109 Stat. 787), and the regulations promulgated by the United States Department of Housing and Urban Development in furtherance of the goals of that act, 24 CFR Part 100, sections 100.304-100.308 and the Georgia Fair Housing Law, O.C.G.A. Sections 8-3-200, et seq. To that end, the Units shall be intended and operated for persons 55 years of age or older. Until such time as all Units are sold to third parties for the purpose of living in such Units as a single-family residence, Declarant shall have the power to amend these Declarations for the purpose of making any such provision consistent with the Fair Housing Acts, the regulations adopted under the Fair Housing Acts, and any judicial decision arising under or relating to the Fair Housing Acts, in order to maintain the intent and enforceability of these Declarations.

Lease Restrictions. Lots may be leased for residential purposes only. “Leasing” for the purposes of this Article is defined as regular, exclusive occupancy of a Lot by any Person other than the Owner; provided, however, “leasing” shall not include exclusive occupancy by the child, parent or grandparent of the Owner. Occupancy by a roommate of an Owner shall not constitute “leasing.” Leasing which is authorized hereunder shall be governed by the following provisions:

- (a) There shall be no subleasing of Lots or assignments of leases without prior written Board approval. Any Owner who is not delinquent in payment of assessments, or otherwise in breach of such Owner’s duties hereunder, may apply to the Board for a

leasing permit allowing the Owner to lease his or her Unit. A leasing permit shall state any and all conditions set by the Board consistent herewith and shall be valid only as to the Owner applying for the same and such Owner's Unit. Leasing permits may not be transferred or assigned to other Units or other Owner's, provided that they may be transferred or assigned to successors in title to the same Unit. Nothing contained herein shall be construed as granting any authority to the Board or the Association to approve or disapprove any proposed tenant.

- (b) The Board shall approve any written request for a leasing permit from the Owner of a Unit, so long as issuance of a leasing permit for the Unit will not result in more than ten percent (10%) of the total Units of the Development having leasing permits. In addition, the Board may issue a leasing permit to the Owner of any Unit who would suffer a substantial hardship if denied the privilege of leasing such Owner's Unit, in the reasonable discretion of the Board (and the Declarant, so long as Declarant owns a Unit). Any such discretionary approval or denial shall be based on the nature, degree, and likely duration of the hardship, the harm, if any, which could result to the Association by allowance of the permit, and the extent to which the number of units with current, valid leasing permits exceed ten percent (10%). Examples of "hardships" as contemplated hereby include, but shall not be limited to, the following: (1) death of a Unit Owner; (2) temporary relocation of an Owner, where the Owner plans to return to reside in the Unit; and (3) permanent relocation of an Owner, if the Owner has been unable to sell the Unit for at least ninety percent (90%) of its fair market value after having actively marketing the Unit for no less than six (6) months. Owners who have been denied leasing permits after written request therefor shall automatically be placed on a waiting list for a leasing permit and shall have priority over any Owner who makes a later request.
- (c) A leasing permit shall be automatically revoked if the Unit for which it has been issued is not leased during any period of ninety (90) consecutive days after issuance of the permit. In addition, any leasing permit issued pursuant to a hardship shall be automatically revoked after the expiration of one (1) year after its issuance, or if during the said one-year term, the Owner is issued a leasing permit on a non-hardship basis.
- (d) Lots may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. The Board shall be provided with a copy of all proposed leases within ten (10) days prior to the effective date thereof, in order to ensure compliance with the provisions stated herein. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lease if a leasing permit has been issued; the Board's approval or disapproval shall be limited to the form of the proposed lease and the contents relating to the Development as stated in subparagraph (e) below.

- (e) Each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:
- a. The lessee shall comply with all provisions of the Declarations, Bylaws, and rules and registrations adopted pursuant thereto and shall control the conduct of all other occupants and guests of the leased Lot in order to ensure such compliance. The Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such occupants, notwithstanding the fact that such occupants of the Lot are fully liable and may be sanctioned for any such violation. If the lessee, or another Person occupying the Lot, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the Bylaws. If the fine is not paid by the Lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot. Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any occupant, or any guest of 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, Bylaws, 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. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Lot.
 - b. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities and other amenities.
 - c. When an Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than sixty (60) 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, 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. If lessee fails to comply with the Board's request to pay Assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for Assessments, for which he or she would otherwise be responsible.

ARTICLE FOUR Maintenance

Association's Maintenance Responsibility. Except as otherwise provided herein, the Association shall maintain and keep in good repair all portions of the Common Property. The Association's responsibility with respect to the Common Property shall be deemed to include, but shall not be limited to, the maintenance, repair and replacement of (i) all monuments and signage, if any, and buildings and other improvements, if any, situated within the Common Property, (ii) such utility lines, pipes, plumbing, wires, conduits, and systems which are a part of the Common Property, (iii) any private road or private drive, (iv) the private areas referenced in Article Seven, and (v) all lawns, trees, shrubs, hedges, grass, conservation easement areas, buffers, fencing, other landscaping, and all detention ponds/stormwater infrastructures situated within or upon the Common Property. The Association will cut, edge, weed, apply chemicals and fertilize, trim shrubs and replace pine straw on all of the Property whether located on a Lot or the Common Area. The Association shall not be responsible for replacing dead plant material unless located on the Common Property. Each Owner shall be responsible for replacement of dead plant material on his or her respective Lot.

From the time that the Common Property or any portion thereof is opened and put into use for the enjoyment of the Owners, Declarant shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners, and all person and entities, of whatever kind of character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Property or any of its improvements, fixtures and facilities; insomuch as the control operation, management, use and enjoyment of the Common Property shall be within, under, and subject to the Association and Declarant. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of any facilities located on the Common Property to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and thereof; and all users of, and visitors to, the Common Property and its improvements and facilities shall use, enjoy, and visit the same at their own risk and peril.

Owner's Maintenance Responsibility. Except as otherwise provided above, all maintenance of the Lot, Unit and any other Structures, driveways, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Development-Wide Standard and this Declaration. Further, Owner shall be responsible for any AC units, utility lines or other equipment which exclusively serve the Lot and/or Unit and which may or may not be physically located on said Lot. The Development-Wide Standard as used in this subparagraph shall mean and refer to the standard of conduct, maintenance or other

activity generally prevailing in The Encore at Etowah. Such standard may be more specifically determined by the Board, but must be consistent with the Development-Wide Standard originally established by the Declarant. In the event the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot. The remedies provided in this Article shall be in addition to, and not in lieu of, other remedies provided in this Declaration for a violation of the Declaration.

ARTICLE FIVE Easements, Zoning and Other Restrictions

Utility Easements. There is hereby created in favor of the Association an easement upon, across, over, through and under all Common Property for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems. An easement is further granted to the Association, its officers, agents, employees and any management company retained by the Association, to enter in or to cross over the Common Property and the Lots, to inspect and to perform the duties of maintenance and repair of the Common Property and the Lots as provided herein. Notwithstanding anything to the contrary contained in this Article, no sewers, electrical lines, water liens or other utilities may be installed or relocated on the property except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Board. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by a separate recordable document, Declarant or the Association shall have the right to grant such easement on the Common Property without conflicting with the terms hereof.

Other Easements.

- (a) Declarant hereby expressly reserves to Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:
 - a. the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with

- the transmission of electricity, telephone, cable television cables and other utilities and similar facilities;
- b. the erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water, and heat, and for any other public or quasi-public facility, service or function;
 - c. slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;
 - d. the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature;
 - e. the use of the Common Property and any sales office, model units and parking spaces (if any) in connection with its efforts to market Lots and Units; and
 - f. the maintenance of such other facilities and equipment as in the sole discretion of the Declarant may be reasonably required, convenient, or incidental to the completion, improvement and sale of Lots or Units.

There is also reserved upon and across every Lot an easement for the purpose of inspecting, reading, maintenance and replacement of utility meters.

- (b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.

Easement Area. The words Easement Area as used herein shall mean those areas on any Lot or any other portion of the Property with respect to which easements are shown on a recorded deed or easement agreement or on any filed or recorded map or plat relating thereto.

Entry. Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Article. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area.

Zoning and Private Restrictions. None of the covenants, restrictions or easements created or imposed by Declarant shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

ARTICLE SIX
Association

Purposes, Powers and Duties of the Association. The Association shall be formed as a non-profit, civic organization for the sole purpose of performing certain functions for the common good and general welfare of the people of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the people of the Development. To the extent, and only to the extent, necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code, (b) shall have all the powers of a condominium organized under the Georgia Condominium Act, and (c) shall have the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

Membership in the Association. Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Restrictions and Easements. For purposes of voting, there shall be two (2) classes of Members as set forth in this Article.

Voting Rights.

- (a) Each Owner of a Unit, with the exception of Declarant, shall be a class A Member and shall be entitled to one (1) Class A Vote per Unit. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association.
- (b) Declarant shall be the sole Class B Member and shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership upon the earlier of the following events: (i) the expiration of ten (10) years after the date of the recording of this Declaration; (ii) the date upon which all of the Units intended by Declarant to be a part of the Development have been conveyed by Declarant to Owners other than a person or persons constituting Declarant; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant.

Board of Directors. A Board of Directors shall manage the affairs of the Association. The number of Directors and the method of election of Directors shall be set forth in the Bylaws of the Association.

Suspension of Voting Rights. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

- (a) shall be subject to the Right of Abatement, as defined in these Declarations, by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC (as herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11, 6.14, or 8.02 hereof:
- (b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of these Declarations; or
- (c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property. Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in this subsection, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress and egress to and from his Lot.

Termination of Membership. Membership shall cease only when a person ceases to be an Owner.

Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Georgia Condominium Act, the Articles of Incorporation of the Association, and the Bylaws of the Association, as each shall from time to time be in force and effect.

Control by Declarant.

- (a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Declarant hereby retains the right to appoint and remove any members of the Board of the Association and any officer or officers of the Association until such time as the first of the following events shall occur: (i) the expiration of ten (10) years after the date of the recording of this Declaration; (ii) the date upon which all of the Units intended by Declarant to be a part of the Development have been conveyed by Declarant to Owners other than a person or persons constituting Declarant; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant.
- (b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. As such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the

Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner by acceptance of a deed to or other conveyances of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE SEVEN

Assessments

Covenant for Assessments and Creation of Lien and Personal Obligation. Each Owner of a Unit, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

- (a) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Units owned by him;
- (b) to pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Units owned by him;
- (c) that there is hereby created a continuing charge and lien upon all Units owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in this Article and costs of collection including reasonable attorneys' fees;
- (d) that such continuing charge and lien on such Unit binds such Unit in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Unit or Units (together with any or all Structures which may from time to time be placed or located thereon), and (2) to finance the construction, repair or alteration of Structures;
- (e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Unit from liability for any assessment thereafter assessed;

- (f) that all annual, special and specific assessments (together with interest thereon as provided in this Article and costs of collection including reasonable attorneys' fees) levied against any Unit owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Unit as provided in this Article) a personal obligation which will survive any sale or transfer of the Unit owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

Purpose of Assessment. The assessment levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the Development, including, but not limited to, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, including the gated entrance, private streets and parking areas, the exterior of all buildings on the Lots, and the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

Annual Assessment.

(a) Computation. Beginning on the Commencement Date and continuing thereafter until January 1st of the year immediately following the Commencement Date, each Unit shall be subject to an annual assessment. At least thirty (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 contribution to establish a reserve fund in accordance with a budget separately prepared as provided herein. For so long as Declarant has the right to appoint and remove Directors and Officers of the Association, Common Expenses shall not include any expenses incurred for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by (i) Members holding a majority of the total Class A votes of the Association and (ii) the Declarant. The operating, maintenance, repair and reserve expenses necessary to operate the installed infrastructure improvements on the Common Elements shall be included as Common Expense.

The annual assessment shall be levied equally against all Lots subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including any reserves. In determining the amount of the annual assessment, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment

income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

Until all Units are issued a Certificate of Occupancy and for so long as Declarant has the right to appoint and remove Directors and officers of the Association, the Declarant may, but shall not be obligated to, reduce the annual assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or an advance against future sums due from the Declarant, or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expenses budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the annual assessment amount for the following year to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members holding at least two-thirds (2/3) of the total Class A votes in the Association and, for so long as Declarant has the right to appoint and remove Directors and officers of the Association, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the Bylaws, which petition must be presented to the Board within twenty (20) days after the date of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the proposed budget is disapproved or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. In such event or if the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year. The Board shall send a copy of the revised budget to each Owner at least thirty (30) days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

(b) Reserve Budget. The Board may, in its sole discretion, annually prepare a reserve budget which takes into account the number and nature of replacement assets within and including the Common Elements, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the general budget reserve amounts sufficient to meet the projected needs of the Association.

(c) Commencing with the first Assessment Year and continuing thereafter, the annual assessment may be increased at any time and from time to time during each Assessment Year not more than ten percent (10%) above the annual assessment for the previous Assessment Year without a vote of the Membership.

(d) Commencing with the first Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may at any time and from time to time be increased more than ten percent (10%) above the maximum annual assessment for the previous Assessment Year if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the Bylaws of the Association and this Declaration.

(e) Upon the purchase of a Lot from a builder, which shall occur upon the issuance of a Certificate of Occupancy for a Lot containing a Unit, the purchaser, who shall become an Owner, shall pay the Association an initial fee of \$500.00, which amount may be increased in the same manner as annual assessments according to paragraphs (c) and (d) hereinabove. Each subsequent transfer of a Unit to a bona fide purchaser, who shall become an Owner, shall incur an initiation fee of \$150.00, which amount may be increased in the same manner as annual assessments according to paragraphs (c) and (d) hereinabove.

Special Assessments for Capital Improvements. In addition to the annual assessments authorized by this Article, the Association may levy, in any Assessment year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property. Such special assessments may be levied by the Board in any Assessment Year without the approval of the Members, which special assessments in the aggregate do not exceed an amount equal to the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of two-thirds (2/3) of the Members of the Association who are present in person or by proxy at a meeting of Members duly held in accordance with the provisions of the Bylaws of the Association and this Declaration.

Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Units.

Contribution by Declarant. For so long as Declarant has the authority to appoint and remove Directors and Officers of the Association, Declarant shall not be liable for the payment of any assessments. Provided, however, during said period Declarant may advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for the reserve allowance), and the sum of annual, special and specific assessments collected by the Association in any Assessment Year, and such advances shall be evidenced by promissory notes from the Association to Declarant.

Effect of Nonpayment of Assessments. Any Assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of the highest legal rate of interest which can be charged or the rate of eighteen percent (18%) per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in

accordance with the preceding sentence), together with interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Unit, enforceable in accordance with the provisions of this Declaration.

Certificate of Payment. Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

Approval by Declarant. Notwithstanding anything to the contrary contained herein, no special assessment shall be made without approval of Declarant for so long as Declarant has the right to appoint officers and directors of the Association.

Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

- (a) Expenses of the Association which benefit less than all of the Units, which may be specifically assessed equitably among all of the Units which are benefited according to the benefit received;
- (b) Expenses incurred by the Association pursuant to these Declarations; and
- (c) Reasonable fines as may be imposed in accordance with the terms of the Declaration and Bylaws.

ARTICLE EIGHT Architectural Control Committee

Architectural Control Committee – Creation and Composition.

- (a) An Architectural Control Committee (the ACC) shall be established consisting of not less than three (3) or more than five (5) individuals, provided, however, that the ACC shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to appoint all members of the ACC until the plans for all of the Units for all of the Lots

in the Development have been approved by the ACC. Thereafter, the Board shall appoint the members of the ACC. All costs of operating the ACC, may, at the discretion of Declarant, be borne by the Association.

- (b) Each initial member of the ACC shall be appointed for a term expiring one year after the Commencement Date. If any vacancy shall occur in the membership of the ACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall subject to the provisions of this Article to be filled by the Declarant (or Board if at the time the Board has the right to appoint members of the ACC) at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC and such resignation shall take effect on receipt thereof by the Chairman. Any member of the ACC may be removed at any time with or without cause by the Declarant (or Board if at the time the Board has the right to appoint members of the ACC).

Purpose, Powers and Duties of the Architectural Control Committee.

- (a) The purpose of the ACC is to assure that any installation, construction or alteration of any Structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.
- (b) The ACC understands that it is the intention of the Declarant for the Development that an Owner, if developmental layout of the Property allows, be allowed to fence in a private area to be located directly behind a Lot. Although all area outside of a Lot will be designated Common Property and conveyed to the Association, Owners shall have the right to submit to the ACC plans and specifications as set forth herein for the construction of such a private area. The ACC shall grant such requests unless topography or other developmental problems dictate otherwise. The ACC shall in its sole discretion have the right to dictate size, fencing materials and all other matters related to the construction and maintenance of these private areas. The Owner of the Lot which is served by the private area shall be responsible for all maintenance related to said area. Once constructed, the private area shall be for the exclusive use and benefit of the Owner of the Unit attached to the private area, its successors, assigns and invitees.

Officers, Subcommittees and Compensation. The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine necessary. The members of the ACC shall be reimbursed by the Association for traveling expenses and other reasonable out-of-pocket costs incurred in the performance of their duties as members of the ACC.

Meetings of the ACC. The ACC shall hold regular meetings at least annually or more often as may be established by the ACC. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be emailed to the email address on record with the ACC or mailed to each member thereof at his Unit or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states at the beginning of the meeting any such objection or objections to the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum is present, and any business may be transacted which might have been transacted at the meeting as originally called. The ACC shall maintain both a record of votes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken shall be signed by all the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such consent shall have the same force and affect as a unanimous vote, and may be stated as such in any document filed by the ACC.

Design Standards.

- (a) The ACC shall from time to time adopt, promulgate, amend, revoke, and enforce guidelines (the Design Standards) for the purpose of:
 - a. governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;
 - b. governing the procedure for such submission of plans and specifications;
 - c. establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of

construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and

d. assuring the conformity and harmony of external design and general quality of the Development.

(b) The ACC shall make a published copy of its current Design Standards readily available to Members and prospective Members of the Association and to all applicants seeking the ACC's approval.

Submission of Plans and Specifications. No Structure shall be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC in the Design Standards, including, but not limited to exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures will appear, and specifications for color scheme, lighting scheme and other details affecting the exterior appearance of all Structures.

Approval of Plans and Specifications. Upon approval by the ACC of any plans and specifications submitted pursuant to this Declaration, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the ACC and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

Disapproval of Plans and Specifications. The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following:

(a) the failure to include information in such plans and specifications as may have been reasonably requested;

(b) the failure of such plans or specifications to comply with this Declaration or the Design Standards;

(c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction, or alteration of a Structure to fail to be in conformity and harmony of external design and general quality with the Standards of the Development as set forth in the Design Standards or the Development-Wide Standard. In any case in which the ACC shall approve the same only as modified or

upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

Inspection Rights. Any employee or agent of the Association or ACC may, after reasonable notice, at any reasonable time or times enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, alteration or maintenance of any Structure is in compliance with the provisions of this Declaration and neither the Association nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of entry or inspection, provided such inspection is carried out in accordance with the terms in this section.

Violations. If any Structure shall be maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association and the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in herein.

Certificate of Compliance.

- (a) Upon completion of the alteration of any Structure in accordance with plans and specifications approved by the ACC, the ACC shall, upon written request of the Owner thereof or upon the ACC's own initiative, issue a Certificate of Compliance, identifying such Structure and the Lot upon which such Structure is placed and stating that plans and specifications have been approved and that such Structure complies with such plans and specifications. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ACC.
- (b) Any certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated; and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all Structures on the Lot comply with all

the requirements of this Article, provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of Structures or of the workmanship, or to represent or warrant to anyone the quality, function or operation of the Structures or of any construction, workmanship, engineering, materials or equipment. The issuance of the Certificate shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule or regulation.

Fees. The ACC may impose and collect a reasonable and appropriate fee to cover the cost of review of plans and of inspections performed pursuant to this Article. The fee shall be established from time to time by the ACC and published in the Design Standards.

Disclaimer as to ACC Approval. Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these Restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the ACC, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages, and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance, and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

ARTICLE NINE Insurance and Casualty Losses

Insurance Coverage. The Association shall obtain insurance for all insurable improvements on the Common Property, including fixtures and building service equipment, to the extent that they are a part of the Common Property and facilities, as well as common personal property and supplies, against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in an amount sufficient to cover the full, current replacement cost, less ordinary deductible amounts, of any repair or reconstruction in the event of damage or destruction from any such hazard. If reasonably available, such policies shall include an agreed amount and inflation guard endorsement. The Board shall also obtain if necessary a policy of flood insurance on buildings if any in the Common Property in an amount deemed appropriate, but not less than the lesser of: (a) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property within any portion of the Common Property located within a designated flood hazard area, or (b) 100% of current replacement costs of all such buildings and other insurable improvements. The Board shall also obtain a public liability policy covering all Common Property and facilities from the hazards of

premises operations and actions arising out of bodily injury, property damage, false arrest, invasion of privacy and libel and slander caused by the negligence of the Association or any of its agents, which public liability policy shall be at least One Million Dollars (\$1,000,000.00) single limit as respects the hazards enumerated herein. All policies must provide that they may not be canceled or substantially modified by any party without at least ten (100) days prior written notice to the Association. Premiums for all such insurance shall be Common Expenses paid for by the Association.

Damage and Destruction.

- (a) Immediately after any damage or destruction by fire or other casualty to all or any part of the Common Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and settlement of all claims arising under such insurance, obtain reliable and detailed estimated of the cost of repair or reconstruction o the damaged or destroyed property and, if such damage or destruction is substantial, provide written notice of same to each mortgage having an interest therein whose name and address have theretofore been furnished to the Association together with a written request for such notice. Repair or reconstruction, as used in this Article, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty, unless otherwise first approved by he Owners and approved in writing by the holders of at least a majority of all first mortgages secured by the Units. Subject to subsection (c) below, all such damage or destruction shall be repaired or reconstructed as soon as practicable after any such casualty shall occur. The Board may advertise for sealed bids from and may negotiate with any licensed contractors, for such repair or reconstruction and may enter into such contract or contracts for such repair or reconstruction and may enter into such contract for repair and reconstruction, as they may deem necessary or advisable. The contracting party or parties may be required to provide a full performance and payment bond for such repair and reconstruction.
- (b) In the event that the insurance proceeds are not sufficient to defray the cost of such repair or reconstruction, the Association's Board shall have the authority to and shall, subject to subsection (c) below, levy a special assessment against all owners in sufficient amount to provide funds to pay such excess costs of repair or reconstruction. Assessments for such purpose may be made, without a vote of the members, at any time during or following the completion of any repair or reconstruction.
- (c) In the event of damage or destruction by fire or other casualty to all or any part of the Common Property, such damage or destruction shall be repaired or reconstructed unless within 60 days after such casualty an instrument requesting that the damage or destruction not be repaired or reconstructed is signed by members of the Association entitled to cast at least two-thirds (2/3) of the votes of each class of members and filed with the Board, in which event the damaged or destroyed area or areas shall be cleaned up and maintained in a neat and attractive condition. If, for any reason, the

amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction is not made available to the Association within said period of 60 days after the casualty, then such period shall be extended until such information shall be made available to the Association; provided, however, that said period of times shall in no event exceed 120 days after the casualty. No mortgagee shall have any right to participate in the determination as to whether the damage or destruction shall be repaired or reconstructed except that insurance proceeds paid as a result of damage or destruction to all or any part of the Common Property shall not be used for other than repair or reconstruction unless otherwise first approved by the owners and approved in writing by the holders of at least two-thirds (2/3) of all first mortgages secured by the Units.

Fidelity Bonds. The Board may obtain and maintain blanket fidelity bonds for all officers, directors, and employees of the Association and all other persons handling or responsible for funds or administered by the Association. Where the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds shall be required for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of fidelity bond coverage shall be determined from time to time by the Board not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in not event may the aggregate amount to such bond be less than a sum equal to three months' aggregate assessments on all Units plus reserve funds. Fidelity bonds required hereby shall name the Association as an obligee and shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions. The premiums on all such bonds (except for premiums on fidelity bonds maintained by a management agent for its officers, employees an agents) shall be paid by the Association as a Common Expense. Such bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten days prior written notice to the Association.

Owner's Insurance. Each Owner shall obtain additional insurance, at his own expense, affording public liability coverage and/or property damage coverage upon his Unit; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all of the Owners and their mortgagees, may realize under any insurance policy with the Association may have in force with respect to the Common Property or any portion thereof at any particular time. Each Owner acquiring additional and separate insurance coverage shall furnish the Association with a copy of each such policy within ten (10) days following the acquisition of such coverage. The Board may require all Owners to carry public liability and property damage insurance with respect to the occupancy of their respective units and to furnish copies or certificates thereof to the Association. It shall be the individual responsibility of each Owner at this own expense to provide, as he sees fit, title insurance on his Unit and such other insurance as is not provided by this Association pursuant to the provisions of this Article.

ARTICLE TEN
General Covenants and Restrictions

Application. The covenants and restrictions contained in this Article shall pertain and apply to all Lots, Units and Structures erected or placed thereon.

Restriction of Use. Lots may be used for single-family Units only and for no other purpose, provided that Declarant may operate a Sales Office and/or Model Unit on a Lot or Lots designated by Declarant.

Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise.

Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot.

Landscaping. No changes shall be made to any landscaping without the prior written approval of the ACC, with the exception of the requirement of each Owner in Article Three regarding dead plant material.

Trees. No tree shall be removed from any Lot unless such removal is approved by the ACC.

Buildings. No buildings or other structures may be built or placed upon a Lot except as originally designed and constructed by Declarant or other contractor allowed by Declarant until every Lot has been built out, unless Declarant has given its express written permission. Unless expressly otherwise permitted by Declarant, Declarant shall be the sole builder of all Structures placed on the Lots.

Signs. No signs whatsoever (including but not limited to commercial and similar signs) shall, without the ACC's prior written approval of plans and specifications therefor, be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

- (a) such signs as may be required by legal proceedings;
- (b) not more than one For Sale sign, such sign having a maximum face area of four square feet; provided that such sign may only be displayed in the front yard of a Lot; and, provided further, that if, at the time of any desired use of such sign, the Association is making For Sale signs available for the Owners' use, the signs made available by the Association must be used;
- (c) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC; and
- (d) for rent signs are prohibited.

Driveways, Parking. No additional driveway shall be constructed or altered on any Lot. No overnight on-street parking is allowed. All vehicles shall only park in the driveway or other designated parking spaces, if any.

Antennae. No exterior television or radio antennae or satellite dish or receiver or solar equipment of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval by the ACC, except that one eighteen inch (18") or smaller receiver may be placed in a location approved by the ACC. No antennae shall be installed or used for the purpose of transmitting of electronic signals.

Clotheslines, Garbage Cans, etc. No outside clotheslines will be allowed. If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such pick-up. At all other times such containers shall be screened or enclosed in the garage or patio.

Solid Waste.

- (a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.
- (b) Except during approved construction and as approved by the appropriate governmental authority, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property;
- (c) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk material or solid waste of any kind shall kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standards. No broken lawn furniture or other items in a state of disrepair, or toys, bicycles and the like, shall be left outside on any lot.

Non-Discrimination. No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Lot to any persons because of race, color, religion, sex, age or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof which may be or may become any annoyance or nuisance to the community.

Rules and Regulations. The Board shall have power to promulgate and enforce rules and regulations relating to the use, operation and maintenance of the Lots, provided the same must be for the benefit of the community.

ARTICLE ELEVEN
Enforcement

Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) Declarant so long as it is an Owner, (ii) the Association and (iii) each Owner, his legal, representatives, heirs, successors and assigns.

Right of Abatement.

- (a) In the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the Right of Abatement.

- (b) The Right of Abatement, as used in this Article, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection including reasonable attorneys' fees, together with interest thereon at the lower of highest rate permitted by Law or 18%, to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to these Declarations. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by the Declarations hereof and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

Collection of Assessments and Enforcement of Lien.

- (a) If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.
- (b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Court House in Bartow County, Georgia to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days), in the paper in which the Sheriff's advertisements for Bartow County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association, or assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen percentum of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.
- (c) **WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S**

RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY, AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

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

ARTICLE TWELVE Duration and Amendment

Duration. This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Bartow County, Georgia, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of twenty (20) years provided, however, that in accordance with statutory procedure, this Declaration and the Restrictions contained herein may be terminated by an instrument executed in proper form and recorded in the office of the Clerk of the Superior Court of Bartow County, Georgia, pursuant to a resolution approving such termination which is approved by fifty-one (51) percent or greater Vote of those Class A Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the Bylaws of the Association.

Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Land Records of the Superior Court of Bartow County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration, or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Article shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Article and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the

Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

Amendments by Association. Amendments to this Declaration, other than those authorized by the Declarant above, shall be proposed and adopted in the following manner:

- (a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association;
- (b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association provided, however (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee, and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant.
- (c) The agreement of the required percentage of the Owners and, where required, Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself.

ARTICLE THIRTEEN Miscellaneous

No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

Headings. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by Declarant, the Association, the ACC, the Owners, or any other person, shall be in writing. All such writings shall be sufficient if (1) deposited in the United States Mail, with sufficient postage, and sent to the addresses contained herein, (2) sent by electronic communication to the last known email address on record with the Board, or (3) personal delivery by tacking notice to the door of the Unit.

(a) Declarant:

D3S, LLC
3344 Peachtree Road, Suite 2400
Atlanta, GA 30326

(b) Owners:

Each Owner's address as registered with the Association in accordance with the Bylaws.

Any written communication transmitted in accordance with this Article shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

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

(This space left intentionally blank – signatures appear on following page)

IN WITNESS THEREOF, the Declarant has caused this Declaration to be duly executed and sealed the day and year first above written.

Signed, sealed and delivered in the presence of:

Declarant: D3S, LLC

Unofficial Witness

By: **DAVID SINCLAIR**, Member

Notary Public

EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND lying and being in the City of Cartersville in Land Lot 809 of the 4th District, 3rd Section, Bartow County, Georgia, more particularly described as follows:

To find the point of beginning, start at the intersection of the north line of Land Lot 809 and the west margin of Douthit Ferry Road, having an 80-foot right of way, marked by a No. 4 rebar; thence north 89 degrees 16 minutes 24 seconds west a distance of 480.25 feet long the north line of land lot 809 to a no. 4 rebar at the POINT OF BEGINNING; thence south 00 degrees 52 minutes 03 seconds west a distance of 408.73 feet to a no. 4 rebar; thence south 55 degrees 07 minutes 40 seconds west a distance of 102.72 feet to a no. 4 rebar; thence south 00 degrees 52 minutes 03 seconds west a distance of 466.42 feet to a no. 4 rebar; thence north 89 degrees 16 minutes 24 seconds west a distance of 580.18 feet to a no. 4 rebar; thence north 00 degrees 04 minutes 53 seconds east a distance of 935.00 feet to a no. 4 rebar on the north line of Land Lot 809; thence south 89 degrees 16 minutes 24 seconds east a distance of 676.39 feet to a no. 4 rebar at the point of beginning, said tract containing 13.43 acres more particularly shown on a plat of survey dated February 22, 2019 prepared for D3S, LLC by Daniel Trenholm Baker, GRLS no. 2327, attached hereto and incorporated herein by this reference