

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FOLIA' OLD MILTON TOWNHOMES

Upon recording, please return to:

Dorothy R. Sachs, Esq.
O'KELLEY & SOROHAN ATTORNEYS AT LAW, LLC
2170 Satellite Boulevard, Suite 375
Duluth, Georgia 30097
Tel: (678) 942-1563
Fax: (678) 542-1667
1601-00547

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TABLE OF EXHIBITS

Exhibit	Subject Matter
"A"	Land Initially Submitted
"B"	Additional Property
"C"	By-Laws of Folia' Old Milton Homeowners Association, Inc.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

FOLIA' OLD MILTON TOWNHOMES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of the date set forth on the signature page hereof by Beecham Group, LLC, a Georgia limited liability company (the "Declarant").

Declarant is the owner of the real property described on Exhibit "A," which is attached hereto and incorporated herein by this reference. This Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the creation of Folia' Old Milton Homeowners Association, Inc. to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration, the By-Laws, and the Design Guidelines. (Capitalized terms are defined in Article 1 below.)

Declarant hereby declares that all of the property described on Exhibit "A" and any Additional Property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

This document does not and is not intended to create a condominium within the meaning of O.C.G.A. § 44-3-70, *et seq.* or a property owners' development within the meaning of O.C.G.A. § 44-3-220, *et seq.*

ARTICLE 1: DEFINITIONS

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

1.1. "Additional Property": All that certain real property which is more particularly described on Exhibit "B," which is attached hereto and incorporated herein by this reference, and which real property is subject to annexation to the terms of this Declaration in accordance with Article 7.

1.2. "ARB": The Architectural Review Board, as described in Section 9.2.

1.3. "Area of Common Responsibility": The Common Area, together with any

additional areas for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, or other applicable covenant, contract, or agreement.

1.4. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Folia' Old Milton Homeowners Association, Inc., as filed and amended from time to time with the Secretary of State of the State of Georgia.

1.5. "Association": Folia' Old Milton Homeowners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

1.6. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under Georgia corporate law.

1.7. "By-Laws": The By-Laws of Folia' Old Milton Homeowners Association, Inc., attached as Exhibit "C," as they may be amended.

1.8. "Common Area": All real and personal property, including, without limitation, any recreational facilities, easements, or licenses which the Association owns, leases, or holds possessory or use rights in for the common use, benefit, and enjoyment of the Owners. The term shall also include any Exclusive Common Area, as defined below.

1.9. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

1.10. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. The Community-Wide Standard shall meet the minimum standards established by the Design Guidelines, rules and regulations of the Association or Board resolutions, whichever is the higher standard. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the ARB.

1.11. "Cost Sharing Agreement": Any agreement, contract, or covenant between the Association and an owner or operator of property adjacent to, in the vicinity of, or within the Properties for the allocation of expenses for amenities and/or services that benefit both the Association and the owner or operator of such property.

1.12. "Days": Calendar days; provided, however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday, or legal holiday, then such time period shall be automatically extended to the close of business on the next regular business day.

1.13. "Declarant": Beecham Group, LLC, a Georgia limited liability company, or any successor, successor-in-title, or assign who holds or takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding

Declarant; provided, however, there shall be only one (1) Person entitled to exercise the rights and powers of the "Declarant" hereunder at any time.

1.14. "Design Guidelines": The design, architectural and construction guidelines and application and review procedures applicable to all or any portion of the Properties promulgated and administered pursuant to Article 9.

1.15. "Development Period": The period of time during which the Declarant owns any property which is subject to this Declaration, any Additional Property, or has the unilateral right to subject Additional Property to this Declaration pursuant to Section 7.1. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public Records.

1.16. "Exclusive Common Area": A portion of the Common Area intended for the exclusive use or primary benefit of one (1) or more, but less than all, Units, as more particularly described in Article 2.

1.17. "Gate System": The mechanical gate system installed by the Declarant which limits and/ or restricts vehicular access, ingress, and egress to the Community.

1.17. "General Assessment": Assessments levied on all Units subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1 and 8.2.

1.18. "Governing Documents": The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, Design Guidelines, the rules of the Association, all Cost Sharing Agreements, and all additional covenants governing any portion of the Properties or any of the above, as each may be amended from time to time.

1.19. "Leasing": The regular, exclusive occupancy of a Unit by any Person other than the Owner; provided, however, for the purposes of this Declaration, Leasing shall not include the occupancy of the Unit by the child or parent of an Owner. For purposes hereof, occupancy by a roommate of an Owner who occupies the Unit as such Owner's primary residence shall not constitute Leasing hereunder.

1.20. "Folia' Old Milton Townhomes": That certain townhome community located in the City of Alpharetta, Fulton County, Georgia and commonly known and referred to as Folia' Old Milton Townhomes.

1.21. "Majority": Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.22. "Master Plan": The land use plan or development plan for Folia' Old Milton Townhomes, as such plan may be amended from time to time, which plan includes the property described on Exhibit "A" and all or a portion of the Additional Property described on Exhibit "B" that Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on

Exhibit "B" from the Master Plan bar its later annexation in accordance with Article 7.

1.23. "Member": A Person subject to membership in the Association pursuant to Section 3.1.

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

1.25. "Mortgagee": A beneficiary or holder of a Mortgage.

1.26. "Owner": One (1) or more Persons who hold the record title to any Unit, including the Declarant, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.

1.27. "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.

1.28. "Properties": The real property described on Exhibit "A" as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 7.

1.29. "Public Records": The Official Records of the Clerk of the Superior Court of Fulton County, Georgia or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.30. "Special Assessment": Assessments levied in accordance with Section 8.4.

1.31. "Specific Assessment": Assessments levied in accordance with Section 8.5.

1.32. "Supplemental Declaration": An instrument filed in the Public Records which subjects Additional Property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.33. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family.

ARTICLE 2: PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Unit, subject to:

- (a) This Declaration and all other Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to

the Association;

(c) The right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Areas;

(d) The right of the Association to rent, lease or reserve any portion of the Common Area to any Owner for the exclusive use of such Owner and his or her respective lessees, invitees, and guests upon such conditions as may be established by the Board;

(e) The right of the Board to suspend the right of an Owner to use any facilities within the Common Area pursuant to Section 4.3;

(f) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(g) The right of the Association, acting through the Board, to dedicate or transfer all or any portion of the Common Area, subject to any approval requirements set forth in the Governing Documents;

(h) The rights of certain Owners to the exclusive use, access and enjoyment of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2.4; and

(i) The right of the Declarant to conduct activities and establish facilities within the Properties as provided in Article 13.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit. However, the Owner shall remain responsible for and obligated to pay any and all assessments and all other charges.

2.2. Private Streets. Every Owner, their family members, lessees, social invitees, and licensees, shall have a right and nonexclusive easement of use, access, and enjoyment in and to, over and across the private streets within the Properties ("Private Streets"), whether or not such Private Streets are Common Area, for the purpose of ingress and egress to public rights-of-way. The rights and nonexclusive easements granted herein are appurtenant to the title to each Unit, subject to:

(a) This Declaration and all other Governing Documents;

(b) The right of the Declarant, so long as the Declarant owns the Private Streets, to adopt, amend and repeal rules regulating the use and enjoyment of the Private Streets, provided that the Declarant shall not by the adoption of any rule or regulation bar access of the Owners across the Private Streets;

(c) The right of the Declarant to dedicate all or any part of the Private Streets;

(d) The right of the Declarant to mortgage, pledge, or hypothecate any or all of the Private Streets as security for money borrowed or debts incurred, provided that the Declarant shall not subject the Private Streets to any security instrument without obtaining the agreement of the lender to subordinate its interest in the Private Streets to the easements for the Owners contained in this Section; and

(e) The rights of the Declarant and the Association to maintain the Private Streets.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable.

2.3. Mail Kiosks. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to, over, and across that portion of the Common Area on which a kiosk for common distribution of mail is located. The rights and nonexclusive easements granted herein are appurtenant to the title to each Unit, and may be extended to the Owners' family members and licensees, including occupants of the Unit. Such easements are subject to the right of the Association to adopt reasonable rules and regulations governing the use of the mail kiosks, provided that, no such rules or regulation shall conflict with any United States Postal Service regulations.

2.4. Exclusive Common Area. Subject to any restrictions or limitations in the deed conveying property to the Association, certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of specified Units. By way of illustration and not limitation, Exclusive Common Areas may include parking areas, driveways, landscaped areas and other portions of the Common Area. All costs associated with maintenance, repair, replacement and insurance of an Exclusive Common Area shall be assessed against the Owners of Units to which the Exclusive Common Areas are assigned as a Specific Assessment.

During the Development Period, any Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned, in the deed by which the Common Area is conveyed to the Association, or in this Declaration, or any Supplemental Declaration and/or on the plat relating to such Common Area; provided however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units during the Development Period. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of particular Units and Exclusive Common Area may be reassigned upon approval of the Board and the vote of Members representing a Majority of the total Class "A" votes in the Association, including, if applicable, the Owners of the Units to which the Exclusive Common Area is assigned, if previously assigned, and the Owners of the Units to which the Exclusive Common Area is to be assigned or reassigned. Any reassignment of an Exclusive Common Area shall be set forth in a Supplemental Declaration executed by the Declarant during the Development Period or thereafter by the Board, or shall be shown on a revised plat relating to such Exclusive Common Area. The Association may, upon approval of a majority of the Class "A" votes in the Association and the Owners of the Units or Units to which the Exclusive Common Area is assigned, if previously assigned, permit Owners of Units to

which the Exclusive Common Area is not assigned to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Specific Assessments attributable to such Exclusive Common Area.

2.5. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of other real property which may or may not be subject to this Declaration.

2.6. Condemnation. The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. Whenever any part of the Common Area shall be taken by or conveyed under threat of condemnation to any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance. The Board may convey Common Area under threat of condemnation only if approved by Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, the written consent of the Declarant. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) Days after such taking, Members holding at least sixty-seven percent (67%) of the total Class "A" votes of the Association and, during the Development Period, the Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and the ARB. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Owner shall be a Member of the Association. There shall be only one (1) membership per Unit. If a Unit is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2(d) and in the By-Laws. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of such Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.

3.2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B."

- (a) Class "A". Members shall be all Owners except the Class "B" Member, if any.

Each Class "A" Member shall have one (1) equal vote for each Unit in which he or she holds the interest required for membership under Section 3.1; provided however, there shall be only one (1) vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.9. All Class "A" votes shall be cast as provided in Section 3.2(d) below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint the members of the Board of Directors until the first to occur of the following:

(i) when one hundred percent (100%) of the total number of Units permitted by the Master Plan for the property described on Exhibits "A" and "B" have certificates of occupancy issued thereon and have been conveyed to Persons other than the Declarant;

(ii) December 31, 2020; or

(iii) when, in its discretion, the Class "B" Member so determines and voluntarily relinquishes such right.

At such time, the Class "B" membership shall terminate, and the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns. After termination of the Class "B" membership, the Declarant shall have a right to disapprove actions of the Board, the ARB, and committees as provided in this Declaration.

(c) Additional Classes of Membership. The Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Units within any Additional Property made subject to this Declaration pursuant to Article 7, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

(d) Exercise of Voting Rights. If there is more than one (1) Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it. No vote shall be exercised on behalf of any Unit if any assessment for such Unit is delinquent.

ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Georgia.

4.2. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits "A" or "B", personal property, leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section. Upon written request of Declarant, the Association shall re-convey to Declarant any portion of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

The Association agrees that the Common Area, including all improvements thereon, shall be conveyed in its "where is, as is" condition and without recourse, and Declarant disclaims and makes no representations, warranties, or other agreements express or implied with respect thereto, including without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and representations or warranties regarding the conditions, design, construction, accuracy, completeness, adequacy of the size or capacity in relation to utilization or the future economic performance or operations of the Common Area. No claim shall be made by the Association or any Owner relating to the condition, operation, or completeness of the Common Area or for incidental or consequential damages arising therefrom. Declarant will transfer and assign to the Association, without recourse, all warranties which it receives from manufacturers and suppliers relating to any of the Common Area which exist and are assignable.

4.3. Enforcement. The Board or any committee established by the Board, with the Board's approval, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in Section 3.22 of the By-Laws. Such sanctions may include, without limitation:

- (a) imposing monetary fines which shall constitute a lien upon the Unit of the violator;
- (b) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
- (c) suspending an Owner's right to vote;
- (d) suspending any Person's right to use the Common Area and any part of the Exclusive Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit; and
- (e) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association.

In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such occupant, guest, or invitee and/or the Owner of the Unit that the violator is occupying or visiting. If a fine is imposed, the fine may first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.

In addition, the Board, or the covenants committee, if established, may elect to enforce any provision of the Governing Documents by exercising self-help (specifically including, but not limited to, the filing of liens in the Public Records for non-payment of assessments and other charges, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, or the correction of any maintenance, construction, or other violation of the Governing Documents) without the necessity of compliance with the procedures set forth in the By-Laws. The Association may levy a Specific Assessment plus a ten percent (10%) administrative fee to cover all costs incurred in bringing a Unit into compliance with the terms of the Governing Documents.

The Association may also elect to enforce any provisions of the Governing Documents by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in the By-Laws.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover from the Owner or other Person all costs, including, without limitation, reasonable attorneys' fees and court costs, incurred in such action, whether suit is filed or not and including any appeals.

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

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

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

4.5. Indemnification. The Association shall indemnify every officer, director, ARB

member, and committee member against all damages, liabilities, and expenses, including reasonable attorneys' fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, ARB member, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and Georgia law.

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

4.6. Dedication of or Grant of Easements on Common Area. The Association may dedicate or grant easements across portions of the Common Area to the City of Atlanta, Fulton County, Georgia, or to any other local, state, or federal governmental or quasi-governmental entity, to any public or private utility company or to the adjoining landowners.

4.7. Security.

(a) Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

(b) No representation or warranty is made that any security system or measure undertaken, including any mechanism or system limiting access to the Properties, cannot be compromised or circumvented, nor that any such system or measure will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Additionally, no representation or warranty is made that the lighting facilities or systems (including the placement thereof) will adequately illuminate or attempt to adequately illuminate all of the Common Areas, or that such facilities or systems will be designed with safety measures in mind. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and

any successor Declarant are not insurers and that each Person using the Properties, including without limitation, any walking and/or nature trail, assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

(c) Any mechanism or system for limiting access to the Properties may, at Declarant's discretion, be left open or unattended, from time to time or at any time, to facilitate access by contractors, subcontractors, inspectors, brokers, salespersons and others to any sales office and/or Units that are under construction or for sale.

4.8. Cooperation with Other Associations. The Association may contract or cooperate with any other property or homeowners associations or entities as convenient or necessary to provide services and privileges, and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other organizations, for the benefit of Owners and their family members, guests, tenants, and invitees. The costs associated with such efforts by the Association (to the extent not chargeable to other organizations) shall be a Common Expense if for the benefit of all Owners or shall be a Specific Assessment if for the benefit of one or more but less than all Owners.

4.9. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant or entities related to Declarant, to provide such services and facilities. The Association shall be further permitted to require Owners to utilize services delivered by a provider designated by the Association. By way of example, but not limitation, the Association shall have the right to designate one garbage collection company to provide service for all Units within Folia' Old Milton Townhomes. The costs of services and facilities contracted for or provided by the Association shall be funded by the Association through General Assessments or Specific Assessments, depending on whether the service or facility is provided to all Units or only to certain designated Units. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. As an alternative, the Association may arrange for the costs of the services and facilities to be billed directly to Owners by the provider(s) of such services and facilities. By way of example, such services which may be provided include water or other utility services, garbage collection, cable and/or satellite television, internet, intranet and other computer related services, and similar services and facilities. The Board, without the consent of the Class "A" Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association.

ARTICLE 5: MAINTENANCE

5.1. Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (i) all Common Area;
- (ii) all utility feeder closets (housing electrical meters, telephone and cable equipment and connections), including the roofs of all utility feeder closets;
- (iii) all landscaping and other flora, structures, and improvements located outside of the dwellings, including any entry features, parks, and dog runs situated upon the Common Area (provided, however, that, maintenance of any enclosed yard or landscaped area of a Unit shall be the responsibility of the Owner thereof);
- (iv) all furnishings, equipment and other personal property of the Association;
- (v) any landscaping and other flora, buffers, entry features, structures and improvements, including street trees, within any right-of-way adjacent to the Properties as deemed necessary in the discretion of the Board;
- (vi) the entrance features into the Properties;
- (vii) any irrigation system situated upon the Common Area;
- (viii) any vehicular and pedestrian access control system;
- (ix) all utility meters and Unit sub-meters and related equipment;
- (x) any private sewer system located on the Properties;
- (xi) any perimeter community wall, fence or other structure located along the boundary line of the Properties;
- (xii) the Private Streets and any community gates;
- (xiii) the fences and walls enclosing the rear yards of the Units;
- (xiv) all Unit address signs and all street signs, including without limitation signs at the entrances into the Properties (but specifically excluding any entrance sign used for commercial space located adjacent to the Properties on Marietta Boulevard);
- (xv) any community lighting, including without limitation pole lights and hanging lights;
- (xvi) any retaining wall located within the Properties, regardless of the location of the retaining wall;
- (xvii) all sidewalks, walkways, common parking areas located on the Properties, parking pads, driveways, and other paved areas;
- (xviii) the mail kiosk;
- (xix) any retention pond located within the Properties, regardless of the location

of the retention pond; and

(xx) such additional portions of any property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, or any contract or agreement for maintenance thereof entered into by the Association.

The Association may, as a Common Expense, maintain other property and improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Notwithstanding anything to the contrary contained in Article 6 or elsewhere in this Declaration, in the event of any casualty loss to any portion of the Properties which is insured by the Owner(s) thereof pursuant to Section 6.2 and which is to be maintained by the Association hereunder, the Association's maintenance responsibility shall be limited to maintaining such portions of the Properties in accordance with the Community-Wide Standard, but shall not require the Association to repair or restore those portions of the Properties (which are insured by the Owner(s) thereof) that are damaged or destroyed to substantially the condition in which they existed prior to the damage or destruction.

(b) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner, or (ii) such property is dedicated to any local, state, or federal government or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Development Period except with the written consent of the Declarant.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof. Notwithstanding the foregoing, the Board may, within its sole discretion, allocate the expense of maintenance, repair, and replacement which benefits one (1) or more, but less than all Units, as a Specific Assessment in accordance with the benefit so received by such Units, pursuant to Section 8.5. As a matter of example, and not limitation, all costs associated with the maintenance, repair and replacement of exterior portions of a dwelling located on a Unit (including, but not limited to, exterior painting, roof repair and replacement, and repair of

exterior fixtures and lights) shall be a Specific Assessment against the particular Unit affected. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be assessed as a Specific Assessment against the particular Units to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

(d) In the event that the Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Community-Wide Standard, the Declarant may, upon not less than ten (10) Days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

5.2. Owner's Responsibility. Each Owner shall maintain the interior and exterior of his or her Unit, including any enclosed yard and all structures, sprinklers and irrigation systems, and other improvements on the Unit, including party walls and structures as set forth in Section 5.3 and all structural and exterior portions of the building comprising such Owner's Unit, in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association. Additionally, each Owner shall be responsible for keeping any storm drain(s) located upon his or her Unit clear of debris.

The responsibility of the Owner shall specifically include the maintenance and repair of the interior and exterior of the dwelling. To the extent that any improvement which is part of the original construction of any dwelling or on any Unit is shared by two (2) or more Units, excluding any retaining wall or fences located upon such Units, the maintenance therefore shall be shared by the benefited Units as set forth in Section 5.3. Further, the maintenance and repair of those portions of the heating and air conditioning systems serving a Unit, including the air conditioning compressor and condenser located outside a dwelling, shall be the responsibility of the Owner of such Unit.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association as a Specific Assessment plus a ten percent (10%) administrative fee against the Unit and the Owner in accordance with Section 8.5. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry by the Association or its designee under this Section shall not constitute a trespass.

5.3. Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, the roof, or any improvement built as a part of the original construction of any dwelling or on any Unit which serves and/or separates any two (2) adjoining Units or dwellings shall constitute a party wall or structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

(b) Sharing and Repair Maintenance. Unless otherwise maintained by the

Association as part of the Area of Common Responsibility, the cost of reasonable repair and maintenance of a party wall or structure shall be shared by the Owners who make use of the party wall or structure in equal proportions.

(c) Damage and Destruction. If a party wall or structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, the Association or any Owner who has used or was benefited by the party wall or structure may restore it, and the other Owner or Owners thereafter who are benefited by the party wall or structure shall contribute to the cost of restoration thereof in equal proportions. However, such contribution will not in any way prejudice the right of any such Owners to call for a larger contribution from the other Owner or Owners using or benefiting by such party wall or structure under any rule of law regarding liability for negligent or willful acts or omissions. In the event that the Association repairs or restores a party wall or structure, the Owner or Owners using or benefiting from such wall or structure shall thereafter be jointly and severally responsible for any and all costs of repair or restoration of the wall or structure plus a ten percent (10%) administrative fee. Such costs shall be due and payable ten (10) Days after the wall or structure has been constructed and shall constitute a Specific Assessment.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

5.4. Gate System. It is anticipated that the Declarant will install the Gate System in the Community. Each Owner, by accepting a deed to a Lot, shall be deemed to acknowledge and agree to the following:

(a) The Board of Directors, with the consent of the Declarant, which consent shall not be unreasonably withheld, shall determine when the Gate System will be operational.

(b) Neither Declarant, the Association nor their respective officers, directors, members, representatives or agents shall be responsible for the security of Owners, Occupants or their family members, guests, invitees or property. NEITHER DECLARANT, THE ASSOCIATION NOR ANY OWNER OR OCCUPANT GUARANTEES OR ASSURES TO ANY OTHER OWNER OR OCCUPANT NOR ANY OTHER PARTY WHOMSOEVER THAT THE GATE SYSTEM WILL IN ANY MANNER WHATSOEVER PROVIDE PERSONAL PROTECTION OR SECURITY TO ANY OWNER OR OCCUPANT, THEIR PERSONAL POSSESSIONS OR TO GUESTS OR INVITEES, OR TO ANY OTHER PERSON, AND EACH OWNER, BY THE ACCEPTANCE OF A DEED TO A LOT, SHALL HAVE ASSUMED THE ENTIRE RISK AS BETWEEN SUCH OWNER AND DECLARANT OR THE ASSOCIATION, AS APPLICABLE, FOR ANY LOSS OR DAMAGE TO PERSON OR PROPERTY WITHIN THE COMMUNITY ARISING FROM ANY DEFICIENCY, FAILURE OR DEFECT IN THE GATE SYSTEM OR OTHERWISE.

(c) All governmental authorities shall have access to the Community for law enforcement, safety and emergency purposes. Each Owner shall look solely to the applicable governmental authority for the provision of law enforcement and police protection.

(d) The Gate System is not intended to replace or to serve in lieu of individual alarm systems or other measures designed to provide security at a residence or within any Lot. Each Owner is encouraged to install personal security devices upon and within such Owner's Lot to the same extent that would be prudent if the Gate System did not exist.

(e) The Gate System will be installed based upon the representations of vendors regarding the operation and performance capabilities of the components of the Gate System.

(f) DECLARANT DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER REGARDING THE GATE SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR THE PURPOSES FOR WHICH IT WAS DESIGNED. Declarant does not guarantee that the Gate System will avert or prevent occurrences or consequences which the Gate System is designed to avert or prevent.

(g) The Gate System shall be owned, operated, and maintained by the Association at its sole cost and expense and the costs associated therewith shall be included in the general assessment. Declarant shall not be required to operate or maintain the Gate System.

(h) Each Owner shall use the Gate System in the proper manner and within the rules and regulations relating thereto as may be adopted from time to time by the Board of Directors.

5.5. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Neither the Association nor any Owner shall be liable for any damage or injury occurring on, or arising out of the condition of, property which such Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.6. Cost Sharing Agreements. Adjacent to or in the vicinity of the Properties, there may be certain residential, nonresidential, or recreational areas, including without limitation retail, commercial, or business areas, which are not subject to this Declaration and which are neither Units nor Common Area as defined in this Declaration (hereinafter "Adjacent Properties"). The owners of such Adjacent Properties shall not be Members of the Association, shall not be entitled to vote, and shall not be subject to assessment under Article 8 of this Declaration.

The Association may enter into one (1) or more Cost Sharing Agreements with the owners or operators of portions of the Adjacent Properties:

(a) to obligate the owners or operators of such Adjacent Properties to perform and/or to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of the Area of Common Responsibility, if any, which are used by or benefit jointly the owners or operators of such Adjacent Properties and the owners within the Properties;

(b) to obligate the Association to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of such Adjacent Properties, if any, which are used by or benefit jointly the owners or operators of such Adjacent Properties and the owners within the Properties; and/or

(c) to establish rules and regulations regarding the use of areas that benefit jointly the owners or operators of such Adjacent Properties and the owners within the Properties.

The owners or operators of such Adjacent Properties shall be subject to assessment by the Association only in accordance with the provisions of such Cost Sharing Agreement(s). If the Association is obligated to share costs incurred by the owners of such Adjacent Properties, such payments by the Association shall be deemed to constitute Common Expenses of the Association unless the Cost Sharing Agreement provides otherwise. The owners or operators of the Adjacent Properties shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided herein.

ARTICLE 6: INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty; provided, however that the Unit Owners shall be responsible for maintaining property insurance on all portions of their Units, notwithstanding the inclusion of certain portions of the Units within the Area of Common Responsibility. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on all rights-of-way located within the Properties and on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf; provided, however that the Association shall not be responsible for maintaining commercial general liability insurance on any Unit or portion thereof, notwithstanding the inclusion of certain portions of the Units within the Area of Common Responsibility. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least one million dollars (\$1,000,000.00) per occurrence with respect to bodily

injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

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

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6th) of the annual General Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

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

Premiums for all insurance on the Area of Common Responsibility shall be a Common Expense and shall be included in the General Assessment, except that premiums for insurance on Exclusive Common Areas may assessed as a Specific Assessment to the benefited Units unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate. In the event of an insured loss, the deductible shall be treated as a Common Expense and assessed in the same manner as the premiums for applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss resulted from the negligence or willful misconduct of one (1) or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.5.

(b) Policy Requirements. The Association shall arrange for periodic reviews of the sufficiency of insurance coverage by one (1) or more qualified Persons, at least one (1) of whom must be familiar with insurable replacement costs in the metropolitan Atlanta, Georgia area.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Member upon request. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a).

(i) All insurance coverage obtained by the Board shall:

(1) be written with a company authorized to do business in the State of Georgia which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(2) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;

(3) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(4) contain an inflation guard endorsement;

(5) include an agreed amount endorsement, if the policy contains a co-insurance clause; and

(6) include an endorsement requiring at least thirty (30) Days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

(ii) In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(1) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(2) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(3) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(4) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(5) a cross liability provision; and

(6) a provision vesting the Board with the exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. In the event of any insured loss covered by insurance held by the Association, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition existing prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area (which, for purposes of this subsection, shall include all retaining walls and fences located within the Properties) shall be repaired or reconstructed unless the Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, the Declarant, decide within sixty (60) Days after the loss either (i) not to repair or reconstruct or (ii) to construct alternative improvements.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) Day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional Days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

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

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements (including, without limitation, any townhome dwelling structure) on his or her Unit, less a reasonable deductible, unless the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner thereof pursuant to Section 8.5.

Upon request by the Board, the Unit Owner shall furnish a copy of such insurance policy or policies to the Association within thirty (30) days from the date of such request. In the event that any such Owner fails to obtain insurance or fails to provide the Association with a copy of such policy or policies as required by this Section, the Association may purchase such insurance on behalf of the Owner and assess the cost thereof to the Owner, to be collected in the manner provided for collection of assessments under Article 8 hereof.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures (including, without limitation, any townhome dwelling structure) or landscaping on or comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure or landscaping consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. The Owner shall pay any costs which are not covered by insurance proceeds.

6.3. Limitation of Liability. Notwithstanding the duty of the Association to maintain

and repair portions of the Common Area, neither the Association, its Board of Directors, its successors or assigns, nor any officer or director or committee member, employee, agent, contractor (including the management company, if any) of any of them shall be liable to any Member or any member of a Member's immediate household for any injury or damage sustained in the Area of Common Responsibility, the Common Area or other area maintained by the Association, or for any injury or damage caused by the negligence or misconduct of any Members or their family members, guests, invitees, agents, servants, contractors, or lessees, whether such loss occurs in the Common Area or in individual Units.

Each Owner, by virtue of the acceptance of title to his or her Unit, and each other Person having an interest in or right to use any portion of the Properties, by virtue of accepting such interest or right to use, shall be bound by this Section and shall be deemed to have automatically waived any and all rights, claims, demands, and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed under this Section.

ARTICLE 7: ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1. Annexation by Declarant. Until ten (10) years after the recording of this Declaration in the Public Records, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the Additional Property. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of the Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

7.2. Annexation by Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members holding a Majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and, during the Development Period, the written consent of the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the president and the secretary of the Association, and by the owner of the property being annexed, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period, for the purpose of removing any portion of the

Properties from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall execute a written consent to such withdrawal.

7.4. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Specific Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property for such purposes as deemed appropriate in the Declarant's sole discretion, including but not limited to modifications to reflect the different character and intended use of such property.

7.5. Amendment. This Article shall not be amended during the Development Period without the prior written consent of Declarant.

ARTICLE 8: ASSESSMENTS

8.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Units; (b) Special Assessments as described in Section 8.4; and (c) Specific Assessments as described in Section 8.5. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit against which the assessment or charge is made until paid, as more particularly provided in Section 8.6. Each such assessment or charge, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

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

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so

elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) Day following the due date unless otherwise specified by Board resolution.

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

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

8.2. Computation of General Assessments. 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 in Section 8.3. For so long as the Class "B" membership exists, 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 Members holding a Majority of the total Class "A" votes of the Association.

General Assessments shall be levied equally against all Units 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 level of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year, and any income expected to be generated from any Cost Sharing Agreements.

During the Development Period, the Declarant may, but shall not be obligated to, reduce the General 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 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 Expense 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. General Assessments begin when an owner other than the Declarant takes title to a unit. During the

Development Period the Declarant shall not be obligated to pay any assessments including but not limited to General, Special, or Specific Assessments.

The Board shall send a copy of the budget and notice of the amount of the General Assessment 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 sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, 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 Section 2.4 of the By-Laws, 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 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 plus an additional five percent (5%) 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.

8.3. Reserve Budget. The Board shall annually prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, 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.

8.4. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment shall be levied and allocated equally among all Units. Any Special Assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes allocated to Units which will be subject to such Special Assessment and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after the date of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.5. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit or Units as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance for enclosed yards, janitorial service, pest control, garbage collection, cable, digital, satellite or similar television service, internet, intranet, and other computer related services, security, fire protection, utilities and similar services and facilities), which assessments may be levied in advance of the provision of the requested benefit, item, or service as a deposit against charges to be incurred by the Owner; and

(b) to cover the costs associated with maintenance, repair, replacement and insurance of any Exclusive Common Area assigned to one (1) or more Units; and

(c) to cover the costs associated with maintenance, repair, and replacement to any portion of the Gate System, if it is determined by the Board of Directors that the damage to the Gate System was caused by a single Owner; and

(d) to cover all costs incurred in bringing the Unit(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests.

In addition, fines levied by the Association pursuant to Section 4.3 shall constitute Specific Assessments.

8.6. Lien for Assessments. The Association shall have a lien against each Unit to secure payment of assessments and other charges, as well as interest at a rate to be set by the Board (subject to the maximum interest rate limitations of Georgia law), late charges in such amount as the Board may establish (subject to the limitations of Georgia law), costs of collection and reasonable attorneys' fees, actually incurred. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Declarant or the Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Unit owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for

assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall remain the personal obligation of the owner of the Unit prior to the foreclosure, and, unless and until collected from such prior owner, shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.7, including such acquirer, its successors and assigns.

All other Persons acquiring liens or encumbrances on any Unit after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

8.7. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the date which the Unit is conveyed to a Person other than the Declarant or an entity related to the Declarant. The first annual General Assessment levied on each Unit shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit, and shall be collected at the closing of the Unit.

8.8. Failure to Assess. Failure of the Board to establish assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year, for which an assessment was made, plus an additional five percent (5%), until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.9. Exempt Property. The following property shall be exempt from payment of General Assessments and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1; and

(b) Any property dedicated or otherwise conveyed to and accepted by any governmental authority or public utility.

8.10. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant or an entity related to the Declarant or upon initial occupancy of a Unit by a Person other than the Declarant, a contribution shall be made by or on behalf of the purchaser or occupant to the working capital of the Association in an amount equal to one-sixth (1/6th) of the annual General Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Association at closing of the purchase and sale of the Unit to the first Owner, or if the obligation to make the capital contribution arises by virtue of occupancy of a Unit by a Person other than the Declarant, the capital contribution shall be paid immediately upon demand by the Association. Capital contributions shall be used by the Association in covering operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

8.11. Default Interest Rate; NSF Checks; Late Fees. Except as otherwise provided in the Governing Documents, any assessment levied upon an Owner which is not paid within

fifteen (15) Days after the date upon which it is due shall bear interest at the lesser of (a) the rate of eighteen percent (18%) per annum; or (b) the maximum rate of interest permissible under the laws of Georgia. In addition, if any Owner pays any assessment (General, Special or Specific) with a check on an account that has insufficient funds ("NSF"), the Board may, in its sole discretion, demand that all future payments be made by certified check or money order along with imposing a reasonable processing charge. Finally, the Association may charge a delinquent Owner an administrative/late fee not to exceed fifty dollars (\$50.00) for each installment due to the Association which is delinquent. Any payment received by the Association shall be applied first to any attorneys' fees and other costs of collection, then to any interest accrued on the late installment, then to any administrative late fee and then to the delinquent assessment.

8.12. Contributions by Declarant. In accordance with Section 8.2, the Declarant may support the Association by funding operating deficits during the Development Period. At the sole election of Declarant, Declarant may recoup from the Association all such payments, which amounts may be paid from the operating account of the Association, or from the working capital contributions collected at the sale of Units, but not from capital reserves. Regardless of whether the Declarant recoups any other deficit amounts, it is not the intention of the Declarant to forfeit refundable reserves or deposits paid by Declarant, nor to pay for deficits created by the nonpayment of assessments by other Owners. It is also not the intention of Declarant to pay for expenses which are otherwise covered in the annual budget of the Association, but which, due to the requirement of an advance payment, create temporary or seasonal deficits. Accordingly, Declarant shall be reimbursed for all amounts paid by Declarant in the funding of deficits caused by the nonpayment of assessments by Owners which, if not sooner paid, shall be paid to Declarant at the time the unpaid assessment is collected. In addition, if not sooner paid, Declarant shall be reimbursed for any refundable deposit upon the Association's receipt of the same.

All deficits shall be collectible by Declarant at any time from the working capital contributions or from excess funds not designated for capital reserves. The Declarant shall have the right to pursue the collection of any unpaid assessments on behalf of the Association, as well as the right to act on behalf of the Association (if necessary) in obtaining refunds of all deposits paid for by Declarant. The Board of Directors, specifically including members of the Board appointed by the Declarant, shall be authorized to execute a promissory note or notes on behalf of the Association to evidence the repayment obligation of the Association; provided however, the failure to execute such a note shall in no way diminish such obligation.

ARTICLE 9: ARCHITECTURAL STANDARDS

9.1. General. No exterior structure or improvement, as described in Section 9.4, shall be placed, erected, installed or made upon any Unit or adjacent to any Unit where the purpose of the structure is to service such Unit except in compliance with this Article, and with the prior written approval of the ARB under Section 9.2, unless exempted from the application and approval requirements pursuant to Section 9.3. The alteration of any portion of the Unit (except for portions located within the interior of any dwelling unit) shall require the prior written approval of the ARB under Section 9.2.

This Article shall not apply to the activities of the Declarant, or to improvements to the

Common Area by or on behalf of the Association. This Article may not be amended during the Development Period without the Declarant's written consent.

9.2. Architectural Review. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties acknowledges that, as the developer of the Properties, Declarant has a substantial interest in ensuring that all structures and improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell or lease any portion of the Properties or the Additional Property. Therefore, the Declarant may, on its behalf, establish an ARB to be responsible for administration of the Design Guidelines and review of all applications for construction and modifications under this Article. The ARB shall consist of one (1) or more Persons who may, but are not required to be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers, or similar professionals, whose compensation, if any, shall be established from time to time by the ARB. The ARB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. In addition, the reviewing bodies may require deposits while construction is pending on any Unit to ensure completion without damage to the Properties.

The ARB shall have exclusive jurisdiction over all construction and modifications on any portion of the Properties. Until one hundred percent (100%) of the Properties have been developed and conveyed to Owners other than the Declarant and initial construction on each Unit has been completed in accordance with the Design Guidelines, the Declarant retains the right to appoint all members of the ARB who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

9.3. Guidelines and Procedures.

(a) Design Guidelines. The Declarant may amend the initial Design Guidelines contained herein in Article 9 for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one (1) portion of the Properties to another depending upon the location, unique characteristics, and intended use. For example, by way of illustration but not limitation, the Design Guidelines may contain requirements with respect to improvements located within enclosed yards which are visible from adjoining streets. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the ARB in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the ARB and compliance with the Design Guidelines does not guarantee approval of any application.

The ARB shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only. There shall be no limitation on the scope of amendments to the Design Guidelines except that no amendment shall require the modification or removal of

any structure previously approved once the approved construction or modification has commenced. The ARB is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive. The ARB shall make the Design Guidelines available to all Owners.

(b) Procedures. Three (3) copies of all plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARB for review. In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In particular, information concerning draining and irrigation must be provided for all construction in a rear yard of a Unit. In reviewing each submission, the ARB may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations.

Each application to the ARB shall be deemed to contain a representation and warranty by the Owner that use of the plans submitted does not violate any copyright associated with the plans. Neither the submission of the plans to the ARB, nor the distribution and review of the plans by the ARB shall be construed as publication in violation of the designer's copyright, if any. Each Owner submitting plans to the ARB shall hold the members of the ARB, the Association and the Declarant harmless and shall indemnify said parties against any and all damages, liabilities, and expenses incurred in connection with the review process of this Declaration.

In reviewing and acting upon requests for approval, the ARB shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time. The ARB shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and whether proposed improvements are consistent with Design Guidelines.

In the event that the ARB fails to approve or to disapprove any application within forty-five (45) Days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARB pursuant to Section 9.6.

Notwithstanding the above, the ARB by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Any Owner may remodel, paint, or redecorate the interior of structures on his or her Unit without the approval of the ARB. However, modifications to decks, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval, including without limitation any fences located on a Unit. Unless otherwise approved by the ARB, powder coated aluminum or steel frame fences are the only approved fence and shall remain the color specified by the ARB.

An Owner may not paint the exterior of any dwelling on his or her Unit or modify the exterior of his or her Unit in any way, and each Owner acknowledges that the architectural design, roof shingles, and selected color scheme of the exterior of a Unit have been carefully chosen in order to preserve the uniform appearance of the Units. The Association shall be responsible for all exterior painting and structural modifications to the exterior of Units. In connection therewith, the ARB shall review all plans and specifications for proposed exterior structures, improvements, roofing and painting. In reviewing each submission, the ARB may consider the quality of workmanship and design, harmony of external design and proposed repainting scheme with existing structures, paint color, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. Owners may provide the ARB with his or her preference for paint and repairs to be made to the exterior of a Unit, but ARB shall have the sole authority to determine matters related to the exterior of a Unit. Each Owner acknowledges that ARB opinions on aesthetic matters are subjective and may vary over time.

(c) Delinquent Assessments and Other Charges. Notwithstanding the provisions of subsection (b) above, any application for the approval of plans and specifications as set forth in this Article shall be deemed to be disapproved unless and until any and all delinquent assessments and other charges permitted by this Declaration have been paid in full by the Owner submitting such plans and specifications for approval.

Subsequent to the approval of plans and specifications pursuant to this Article, if the Owner shall become delinquent in the payment of assessments or other charges permitted by this Declaration at any time during the prosecution of the approved work, the Owner shall be deemed to be in violation of such approval and shall be subject to any means of enforcement set forth in Section 9.8 and Section 4.3.

9.4. Specific Guidelines and Restrictions.

(a) Exterior Structures and Improvements. Exterior structures and improvements shall include, but shall not be limited to, staking, clearing, excavation, grading and other site work; initial construction of any dwelling or accessory building; exterior alteration of existing improvements; installation or replacement of hardscape, such as patios, driveways, walkways, or parking areas; installation or replacement of any decks; exterior lighting; address identification signs; mailboxes; basketball goals; swing sets and similar sports and play equipment; clotheslines; garbage cans; wood piles; swimming pools; gazebos or playhouses; window air-conditioning units or fans; window screens; screen doors; hot tubs; or solar panels; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; dog runs, animal pens, or fences of any kind, hedges, walls, including invisible fences; artificial vegetation or sculpture; and planting or removal of landscaping materials. Notwithstanding the foregoing, the Declarant and the Association shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all federal laws and regulations.

(b) In addition to the foregoing activities requiring prior approval, the following items are strictly regulated, and the ARB shall have the right, in its sole discretion, to prohibit or

restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless approval or waiver in writing is obtained from the ARB. The ARB may, but is not required to, adopt additional specific guidelines as part of the Design Guidelines.

(i) Signs. No sign of any kind shall be erected by an Owner or occupant without the prior written consent of the ARB, except (1) such signs as may be required by legal proceedings; (2) not more than one (1) professional security sign of such size and location deemed reasonable by the ARB in its sole discretion; (3) not more than one (1) "For Sale" or "For Rent" sign not to exceed two feet by two feet (2' x 2') in size on any Unit being offered for sale or for lease; (4) one (1) political campaign sign not to exceed two feet (2') by two feet (2') for such time periods as established by the ARB; and (5) such additional signs as may be permitted in the Design Guidelines; provided however, all signs shall be posted and placed on the inside of the windows of a Unit in accordance with any requirements set forth in the Design Guidelines. Unless in compliance with this Section, no other signs shall be posted or erected by any Owner or occupant within any portion of the Properties, including the Common Area, any structure or dwelling located on the Common Area or any Lot (if such sign would be visible from the exterior of such structure or dwelling as determined in the reviewing body's sole discretion).

The Declarant and the ARB reserve the right to prohibit signs and to restrict the size, content, color, lettering, design and location of any approved signs. All signs must be professionally prepared. This provision shall not apply to entry, directional, or other signs installed by the Declarant or its duly authorized agent as may be necessary or convenient for the marketing and development of the Properties.

(ii) Tree Removal. Notwithstanding anything in this subsection to the contrary, no tree shall be removed from the Properties within the prior consent of any governmental authority having applicable jurisdiction over the removal of such. Furthermore, no trees with trunks that are more than six inches (6") in diameter at a point two feet (2') above the ground shall be removed without the prior written consent of the ARB; provided, however, any trees, regardless of their trunk diameter, that are located within ten feet (10') of a drainage area, a sidewalk, a residence, or a driveway, or within five feet (5') of any dwelling or any diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons may be removed without the written consent of the ARB. The ARB may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any tree removed. Notwithstanding the foregoing, the requirements regarding ARB consent in this subsection shall not apply to trees, if any, removed by the Declarant during the Development Period.

(iii) Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Unit, (2) pathway lighting; (3) a reasonable number of seasonal decorative lights during the usual and common season; (4) any additional lighting as may be approved by the ARB; (5) front house illumination of model townhomes; or (6) any additional lighting as may be approved by the ARB; provided however, all such lighting shall be consistent with any requirements contained in the Design Guidelines. Light from security lighting fixtures, spotlights and floodlights shall not be directed onto adjoining Units or Common Area and shall be removed or shielded if the ARB determines that

such lighting constitutes a nuisance.

(iv) Temporary or Detached Structures. Except as may be permitted by the ARB, no temporary house, dwelling, garage or outbuilding shall be placed or erected on any Unit. Except as provided in Section 10.7, no mobile home, trailer home, travel trailer, camper, or recreational vehicle shall be stored, parked, or otherwise allowed to be placed on a Unit as a temporary or permanent dwelling.

(v) Window Treatments. Unless otherwise approved in writing by the ARB, all windows on any structure or dwelling shall have window treatments, and any portion thereof visible from outside such structure or dwelling shall be white, off-white, or light in color. All window screens shall conform to standards (including, without limitation, approved design and colors) approved by the ARB.

(vi) Antennas and Satellite Dishes. No transmission antenna, except for customer-end antennas that receive and transmit fixed wireless signals, may be erected anywhere on the Properties without written approval of the ARB. No direct broadcast satellite ("DBS") antenna or multi-channel multi-point distribution service ("MMDS") larger than one meter (39.37") in diameter shall be placed, allowed, or maintained upon any portion of the Properties, including but limited to any Unit. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may be installed only in accordance with Federal Communication Commission ("FCC") rules and any requirements of the ARB and the Association that are consistent with the rules of the FCC, as they may be amended from time to time. Such items shall be installed in a location approved by the ARB, which shall be the least conspicuous location available on the Unit which permits reception of an acceptable signal. The approved locations for DBS and MMDS antennas one meter or less in diameter are the roofs of units or the rear facades of units (the façade facing the backyard of the unit). No such item is permitted to be installed on the front elevation facing façade or end façade of any building, or installed in any manner as would cause the antenna or satellite dish to be visible from the front elevation or plaza. Any deviation from the approved location must be approved in writing by the ARB. Except as otherwise provided by this subsection, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Properties, whether attached to a structure or otherwise; provided, however, that the Association shall have the right to erect, construct and maintain such devices.

(vii) Garage Conversions. Except as may be permitted by the ARB, no Owner may convert the garage portion of its Unit into a dwelling space. The exception to this rule is the M7 unit types (1 bedroom 1.5 bathroom 3 story units as built). These units may convert their rear garage spot into living space with the ARB's approval of their rear façade plans. If an M7 owner chooses to make changes to the interior of their garage without modifying the appearance of the rear façade they can do so without the approval of the ARB.

9.5. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or

additionally submitted for approval.

9.6. Variance. The ARB may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with rules and regulations adopted by the ARB. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the ARB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.7. Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Declarant, the Association, the Board, nor the ARB shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements nor for ensuring that all dwellings are of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Neither the Declarant, the Association, the Board, the ARB, or any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.5.

9.8. Enforcement. The Declarant, any member of the ARB, or the Board, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Unit to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this Article. Any structure, improvement, or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written notice from the ARB, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore the property as required, any authorized agent of Declarant, the ARB, or the Board shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the Declarant and the ARB by any means of enforcement described in Section 4.3. All costs, including a ten percent (10%) administrative fee, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment pursuant to Section 8.5.

Unless otherwise specified in writing by the ARB, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application

has been obtained. If, after commencement, any Person fails to diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred plus a ten percent (10%) administrative fee against the Unit and the Owner thereof as a Specific Assessment.

Neither the ARB nor any member thereof nor the Association, the Declarant, or their members, officers or directors shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the ARB from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

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

ARTICLE 10: USE RESTRICTIONS

10.1. General. This Article sets out certain use restrictions which must be complied with by all Owners and occupants of any Unit. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, model homes, sales offices for the Declarant, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibits "A" or "B") consistent with this Declaration and any Supplemental Declaration.

10.2. Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by Members holding a Majority of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant.

10.3. Occupants Bound. All provisions of the Declaration, By-Laws, the rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned.

10.4. Residential Use. Units may be used only for residential purposes of a single family and for ancillary business, home occupation, or home office uses. A business, home occupation, or home office use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the activity conforms to all zoning requirements for the Properties; (c) the activity does not involve regular visitation of the Unit by clients, customers, employees, suppliers, or other invitees or door-to-door solicitation of residents of the Properties; (d) the activity does not increase traffic or include frequent deliveries within the Properties; and (e) the activity is

consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

No other business, trade, or similar activity shall be conducted upon a Unit without the prior written consent of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties.

No garage sale, moving sale, rummage sale, auction or similar activity shall be conducted upon a Unit without the prior written consent of the Board and compliance with any rules adopted by the Board.

10.5. Occupancy of Unfinished Dwellings. No dwelling erected upon any Unit shall be occupied in any manner before commencement of construction or while in the course of construction nor at any time prior to the issuance of such dwelling's certificate of occupancy.

10.6. Parking.

(a) Automobiles and non-commercial trucks and vans shall be parked only in the Owner's garages unless otherwise approved by the ARB; provided however, the Declarant and/or the Association may designate certain on-street parking areas for certain Units and visitors subject to reasonable rules. Owners shall not park for more than two (2) hours during the day or at all overnight in front of garage doors or in parking areas designated for visitors or guests. Visitors and guests may park automobiles and non-commercial trucks in the driveways serving the Units while visiting the Units. Commercial vehicles, owned by repair trades and not by Owners, can park commercial vehicles in designated parking spots while present in the community to repair a Unit. Commercial vehicles, vehicles primarily used or designed for commercial purposes, and vehicles with commercial writings on the exterior owned by Owners shall be parked only in garages. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Properties. No motorized vehicles shall be permitted on pathways, sidewalks (except that motorized vehicles shall be permitted on those portions of the sidewalks which also constitute a portion of a driveway), trails, or unpaved Common Area except for public safety vehicles authorized by the Board.

(b) Recreational vehicles shall be parked only in the garages serving the Units. The

term "recreational vehicles," as used herein, shall include, without limitation, motor homes, mobile homes, boats, "jet skis," or other watercraft, trailers, other towed vehicles, motorcycles, mini-bikes, scooters, go-carts, golf carts, campers and buses. Any recreational vehicle parked or stored in violation of this provision in excess of forty-eight (48) hours shall be considered a nuisance and may be removed from the Properties. The Declarant and/or the Association may designate certain parking areas within the Properties for recreational vehicles subject to reasonable rules and fees, if any.

(c) Service and delivery vehicles may be parked in the Properties during daylight hours for such periods of time as are reasonably necessary to provide service or to make a delivery within the Properties.

(d) No maintenance may be performed on any vehicle on any street, parking area or Common Area.

(e) All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt.

10.7. Private Streets. The Private Streets shall be subject to the provisions of this Declaration regarding use of Common Area. Additionally, Owners of Units and other permitted users of the Private Streets pursuant to Section 2.2 shall be obligated to refrain from any actions which would deter from or interfere with the use and enjoyment of the Private Streets by other authorized users of the Private Streets. Prohibited activities shall include without limitation obstruction of any of the Private Streets.

10.8. Use of Common Area. There shall be no obstruction of the Common Area, nor shall anything be kept, parked, or stored on any part of the Common Area without the prior written consent of the Association, except as specifically provided herein. No planting or landscaping shall be done in the front of a Unit unless approved by the ARB. Common Area shall not be modified by any Owner in any way.

10.9. Impairment of Dwellings and Easements. Owners shall not perform any act or work that will impair the structural soundness or integrity of another dwelling or impair any easement or hereditament, nor allow any condition to exist which will adversely affect the other Units or their Owners or occupants.

No Owner shall make any alterations to his or her Unit or bring or keep anything therein which will increase the risk of fire, conflict with fire laws or the regulations of the local fire department, or increase the premiums of any insurance policy on the Area of Common Responsibility maintained by the Association.

10.10. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Unit, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. "Usual and common household pets" include birds and fish, but do not include wild, exotic, or bizarre animals such as, but not limited to, pigs, snakes, reptiles, rodents, or animals of similar import. Pets may not be tied outside without constant supervision. No animals shall be kept, bred, or maintained for commercial purposes without prior written Board approval. All Owners and occupants must

strictly comply with all applicable laws and ordinances concerning pets. Non-compliance may result in the pick-up of animals by the appropriate governmental authorities. All pets shall be reasonably controlled by the owner whenever outside a dwelling and shall be kept in such a manner as to not become a nuisance by barking or other acts. All dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside a dwelling. The owners of the pet shall be responsible for all of the pet's actions. The owner of the pet or the person responsible for the pet must immediately remove any feces left upon the Common Area, the Exclusive Common Area or upon the rear yard area by pets. Notwithstanding anything herein to the contrary, no pit bull dogs, rottweilers, or other pets determined in the sole discretion of the Board to be dangerous may be brought onto or kept on the Properties. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, such animal shall be removed from the Properties. Pets shall be registered, licensed, and inoculated as required by law. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 4.3. This Section shall not be construed to interfere with any provision under the Americans with Disabilities Act, the Fair Housing Amendments Act, or any similar applicable federal, state or local law, ordinance or regulation. Service animals in active use shall be permitted on the Properties.

10.11. Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Properties shall be used, in whole or in part, for the storage of any item or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious or offensive activity shall be carried on within the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier, or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARB, shall be located, installed, or maintained upon the exterior of any Unit unless required by law. Any siren or device for security purposes shall contain a device or system which causes it to shut off automatically.

The reasonable and normal development, construction and sales activities conducted or permitted by the Declarant shall not be considered a nuisance or a disturbance of the quiet enjoyment of any Owner or occupant.

10.12. Storage of Materials, Garbage, Dumping, Storage Sheds, Etc.. All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property and may only be left outside in the back yard of any Unit. All rubbish, trash, and garbage shall be placed in bound plastic bags and shall be placed in community trash compactor(s) located within the Properties. Each Owner shall be responsible for regularly depositing his or her

rubbish, trash and garbage in the community trash compactor(s) and shall not allow rubbish, trash and garbage to accumulate. There shall be no dumping of grass clippings, leaves, or other debris; rubbish, trash, or garbage; petroleum products, fertilizers, or other potentially hazardous or toxic substances on any portion of the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff and provided further that the fertilizers comply with any and all applicable state, county, and/or local regulations. There shall be no outside storage or outside storage sheds allowed on any Unit.

10.13. Combustible Liquid. There shall be no storage of gasoline, propane, heating, or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Unit for emergency purposes and except as may be approved in writing by the ARB. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

10.14. Guns. The discharge of firearms on the Properties is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types. The Board may impose fines and exercise other enforcement remedies as set forth in this Declaration, but shall have no obligation to exercise self-help to prevent or stop any such discharge.

10.15. Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed after a subdivision plat including such Unit has been approved and filed in the Public Records without the Declarant's prior written consent during the Development Period and the prior written consent of the ARB thereafter. In addition, no dwelling shall be subdivided or partitioned to create housing for more than a single family. Declarant, however, hereby expressly reserves the right to replat any Unit or Units which it owns. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

10.16. Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped, improved and maintained so as to permit safe sight across such areas. No fence, wall, hedge, or shrub shall be placed or permitted to remain where it would cause a traffic or sight problem.

10.17. Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No improvements, obstructions, or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner shall be responsible for maintaining all drainage areas located on its Unit. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas.

(c) Each Owner shall be responsible for controlling the natural and man-made water flow from its Unit. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Properties with excessive water flow from its Unit. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from

Units. Neither the Association nor the Declarant bears any responsibility for remedial actions to any Unit.

(d) Use of any areas designated as "drainage easement areas" on any recorded subdivision plat of the Properties, shall be subject to strict prohibitions against encroachment of structures into, over, or across the drainage easement areas, and the right of the Declarant and the Association to enter upon and maintain the drainage easement areas. Such maintenance activities may include disturbance of landscaping pursuant to the terms contained in any declaration of easements, notwithstanding approval of the landscaping as set forth in Article 9.

(e) No Person shall alter the grading of any Unit without prior approval pursuant to Article 9 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

(f) All Persons shall comply with any and all applicable city, county, state and federal erosion control ordinances and regulations in construction of improvements on any Unit and, where required, shall maintain silt fencing and vegetative and structural sediment control and collection devices.

(g) All Persons shall comply with any and all applicable state or county ground disturbance laws, including, but not limited to Chapter 9 of Title 25 of the Official Code of Georgia Annotated, specifically O.C.G.A. §25-9-6 also referred to as the Call-Before-You-Dig law.

ARTICLE 11: EASEMENTS

Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, the Association, the Members, the Owners, and their successors-in-title.

11.1. Easements of Encroachment. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Units and between each Unit and any adjacent Common Area due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall such easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement. Declarant also reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Units and between each Unit and any adjacent Common Area due to the existence of portions of a dwelling (including, but not limited to, bay windows, awnings and roofs) which extend into the airspace over a boundary line.

11.2. Easements for Utilities, Etc.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself during the Development Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure, existing or proposed, except as provided below) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, servicing, operating and removing: cable, digital, satellite, or similar television systems, master television antenna systems, related utility feeder closets and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, irrigation and drainage systems; street lights (including, but not limited to, the right to install, maintain, repair and replace street lights, light supports, conduits, and cables supporting street lights attached to any Unit); signage (including, but not limited to, the right to install, maintain, repair and replace street name signs and address signage attached to any Unit); garbage collection; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, utility meters, electric power centers, low voltage distribution centers, utility closets and utility lines and cables; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

Declarant may assign to any utility sub-metering company, local water supplier, sewer service provider, electric company, telephone company, internet provider, cable provider and/or natural gas supplier the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, inspecting, repairing and maintaining utility lines, poles, wires, transformers, service pedestals, meters, boxes, and other necessary apparatus, fixtures, and appliances as applicable. In addition, Declarant may assign to any garbage collection company, including any municipally-operated garbage collection service, the easements set forth herein across the Properties, including the Private Streets, for ingress, egress, and collection of garbage from the Units.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period and its designees non-exclusive, perpetual, reciprocal, appurtenant easements, and the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B".

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. Nothing contained herein shall obligate the Declarant, the Association, or the Board to pursue legal recourse against any Person damaging a Unit or any portion thereof as a result of the exercise of this easement. Notwithstanding the foregoing, in the event that the Person exercising the easement is not legally or contractually obligated to repair such damage caused in the course of exercising its easement rights, the Association may repair such damage and assess the costs as set forth in Article 8 of this Declaration. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit, and except in an emergency, entry onto any Unit

shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.3. Easement for Slope Control, Drainage and Waterway Maintenance. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements, for itself and the Association, and their respective representatives, successors and assigns, contractors and agents, over, across, under, through and upon each Unit for the purposes of:

(a) controlling soil erosion, including grading and planting with vegetation any areas of any Unit which are or may be subject to soil erosion;

(b) drainage of natural or man-made water flow and water areas from any portion of the Properties;

(c) changing, modifying, or altering the natural flow of water, water courses, or waterways on or adjacent to any Unit or Common Area; and

(d) installing such pipes, lines, conduits, or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Properties.

11.4. Easements to Serve Additional Property. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation its successors-in-title, agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for the construction of roads, posting of signs and for connecting and installing utilities serving the Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of the Additional Property.

11.5. Easement for Entry. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for the Association to enter upon any Unit for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association's officers, committee members, agents, employees and managers of the Association, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to the Owner. This easement includes the right to enter any Unit to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize

entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

11.6. Easements for Maintenance and Enforcement.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for the Association to enter all portions of the Properties, including each Unit, but excluding the interior of any residential dwelling, to (i) perform its maintenance responsibilities under Article 5 including, but not limited to, access into the enclosed rear yards of each Unit for maintenance or repair to the fence and/or any retaining wall located therein, and (ii) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Unit shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

(b) The Association also may enter a Unit, excluding the interior of any residential dwelling, to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred plus a ten percent (10%) administrative fee, including reasonable attorneys' fees, may be assessed against the violator as a Specific Assessment.

(c) Entry under this Section shall not constitute a trespass, and prior notice to the Owner shall not be required except as provided in Section 5.2.

11.7. Lateral Support. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area, every Unit, and any improvement which contributes to the lateral support of another portion of the Common Area or of another Unit. All portions of the Properties, including any Unit, which contribute to the lateral support of any portion of the Common Area or of a Unit shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

11.8. Easement for Use of the Private Streets. Declarant hereby grants to the Owners, their family members, lessees, social invitees, and licensees, including but not limited to any private or municipally-operated garbage collection service, a perpetual, non-exclusive easement of use, access, and enjoyment in and to, over and across over and across the Private Streets. Use of the Private Streets shall be governed by reasonable rules and regulations promulgated by the Association.

11.9. Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, the Association, their successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

ARTICLE 12: MORTGAGEE PROVISIONS

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

both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

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

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

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

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

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

12.4. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) Days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

12.5. Construction of Article 12. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

ARTICLE 13: DECLARANT'S RIGHTS

13.1. Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an

obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

13.2. Development and Sales. The Declarant may maintain and carry on the Properties such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, such as sales activities, tournaments, charitable events, and promotional events, and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area. In the event that any such activity necessitates the exclusion of Owners from Common Areas, such activities shall not exceed seven (7) consecutive Days. The Declarant shall have easements over the Properties for access, ingress, egress and conducting such activities

In addition, the Declarant may establish within the Properties, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, including, but not limited to, business offices, signs, model units, tents, sales offices, sales centers and related parking facilities. During the Development Period, Owners may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant shall have easements over the Properties for access, ingress, and egress and use of such facilities.

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

13.4. Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 7.4, may conflict with the Declaration, By-Laws, or Articles.

13.5. Right of Declarant to Disapprove Actions. Until two (2) years following the termination of the Class "B" membership, the Declarant shall have the right to disapprove any action, policy, or program of the Association, the Board, the ARB, and any committee which, in the sole judgment of the Declarant, would tend to impair rights of the Declarant under the Governing Documents, or interfere with development of, construction on, or marketing of any portion of the Properties, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board or any committee as may be granted to the Declarant in the Governing Documents.

(a) Until two (2) years following the termination of the Class "B" membership, the Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board, or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address the Declarant has registered with the secretary of the Association, which notice complies with the By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at such meeting. The Declarant may waive its right to receive notice in the same manner as provided in the By-Laws.

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy, or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Declarant, acting through any authorized representative, may exercise its right to disapprove at any time within ten (10) Days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) Days following receipt of written notice of the proposed action. No action, policy, or program shall be effective or implemented if the Declarant exercises its right to disapprove. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

13.6. Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines shall be effective without prior notice to and the written consent of the Declarant, during the Development Period. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) fifteen (15) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

ARTICLE 14: GENERAL PROVISIONS

14.1. Duration.

(a) Unless terminated as provided in Section 14.1(b), the provisions of this Declaration shall run with, bind the Properties and remain in effect perpetually to the extent permitted by law; provided, however, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected

thereby shall run with and bind the land for so long as permitted by Georgia law. To the extent that Georgia law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Georgia law, this Declaration may be terminated within the first twenty (20) years after the date of recording by an instrument signed by Owners of at least ninety percent (90%) of the total Units within the Properties, which instrument is recorded in the Public Records; provided however, regardless of the provisions of Georgia law, this Declaration may not be terminated during the Development Period without the prior written consent of the Declarant. After twenty (20) years from the date of recording, this Declaration may be terminated only by an instrument signed by Owners owning at least fifty-one percent (51%) of the Units and constituting at least fifty-one percent (51%) of the total number of Owners, and by the Declarant, if the Declarant owns any portion of the Properties, which instrument complies with the requirements of O.C.G.A. § 44-5-60(d) and is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

14.2. Amendment.

(a) By Declarant. Until expiration of the Development Period, Declarant may unilaterally amend this Declaration or any Supplemental Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee Mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. However, no amendment by Declarant shall have a material adverse effect on the title to any Unit unless the Owner of such Unit so affected shall consent thereto in writing. The failure of an amendment to apply uniformly to all Units shall not constitute a material adverse effect upon the rights of any Owner.

(b) By the Board. The Board shall be authorized to amend this Declaration without the consent of the Members (i) for the purpose of submitting the Properties to the Georgia Property Owner's Association Act, O.C.G.A. §44-3-220, *et seq.* (1994) and conforming this Declaration to any mandatory provisions thereof, (ii) to correct scrivener's errors and other mistakes of fact, provided that amendments under this provision have no material adverse effect on the rights of the Owners; and (iii) for the purpose of bring any provision contained herein into compliance with the Fair Housing Amendments Act of 1988, as more fully set forth in Section 14.5. Except for amendments for the purposes set forth in Section 14.5, during the Development

Period, any such amendments shall require the written consent of the Declarant.

(c) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, the written consent of the Declarant.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege.

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

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

14.4. Dispute Resolution. It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances, or disputes involving the Properties, including, without limitation, claims, grievances, or disputes arising out of or relating to the interpretation, application, or enforcement of the Governing Documents through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures.

Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

14.5. Fair Housing Amendments Act. The provisions of the Governing Documents shall be subordinate to the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.*, (hereinafter referred to as "FHAA"), and shall be applied so as to comply with the FHAA. In the event that there is a conflict between or among the Governing Documents and the FHAA, the

FHAA shall prevail. Notwithstanding anything to the contrary contained herein, in the event that any provision of this Declaration conflicts with the FHAA, the Board of Directors, without the consent of the Members or of the Declarant, shall have the unilateral right to amend this Declaration for the purpose of bringing this Declaration into compliance with the FHAA.

14.6. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Members holding eighty percent (80%) of the total Class "A" votes in the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.7. Non-Merger. Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

14.8. Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants and reservations of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

14.9. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with any additional recorded covenants, restrictions, and declarations applicable to any portion of the Properties; provided however, in the event of a conflict between or among this Declaration and such covenants, restrictions, or declarations, and/or the provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the By-Laws, Articles, and use restrictions and rules of the Association shall prevail over those of any portion of the Properties. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration or other recorded covenants, restrictions, and declarations applicable to any portion of the Properties from containing additional covenants, restrictions, or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

14.10. Use of the "Folia' Old Milton Townhomes" and/or "Folia' Old Milton" Name and

Logo. No Person shall use the words "Folia' Old Milton Townhomes," or logo for Folia' Old Milton Townhomes, if any, in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Folia' Old Milton Townhomes" in printed or promotional matter where such terms are used solely to specify that particular property is located within Folia' Old Milton Townhomes and the Declarant and the Association shall each be entitled to use the words "Folia' Old Milton Townhomes" in their names.

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

14.12. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to a Unit shall give the Board at least seven (7) Days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. After transfer of title, the transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

14.13. Exhibits. Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 14.2. Exhibit "C" is attached for informational purposes and may be amended as provided therein.

3d IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration, this day of March, 2016.

DECLARANT:

Signed, sealed and delivered
in the presence of:

Beecham Group, LLC,
a Georgia limited liability company

By: Brent A. Beecham, LLC,
Brent A. Beecham, Member, for Beecham Group,
LLC, a Georgia limited liability company.

Witness

Notary Public

Commission Expiration Date

[NOTARY SEAL]

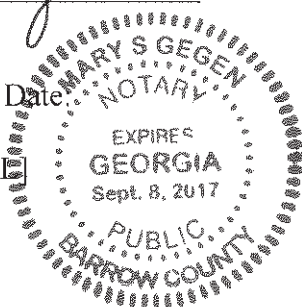


EXHIBIT "A"

Land Initially Submitted

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 49 of the 1st District, 1st Section of Fulton County, Georgia, containing 1.7582 acres, more or less, as shown on plat of survey for Stuart Elder, dated June 25, 1997, prepared by J. A. Evans & Associates, James A. Evans, Jr., GA R.L.S. No. 2167 and being more particularly described according to said survey as follows:

Beginning at a point marked by an iron pin placed on the Northeasterly Right of Way of Old Milton Parkway f/k/a State Bridge Road (variable Right of Way), said point being 117.63 feet Northwesterly along said Right of Way of Old Milton Parkway f/k/a State Bridge Road from its point of intersection with the Right of Way of Bridge Pointe Drive (if extended) (variable Right of Way), then continuing along the aforesaid Right of Way of Old Milton Parkway f/k/a State Bridge Road, run thence North 66 degrees 32 minutes 15 seconds West a distance of 180.87 feet to a Point marked by a concrete monument found, then leaving the aforesaid Right of Way, run thence north 52 degrees 31 minutes 02 seconds East a distance of 30.89 feet to a point marked by a concrete monument found, run thence North 66 degrees 32 minutes 16 seconds West 45.00 feet to a point marked by a concrete monument found; run thence South 52 degrees 31 minutes 03 seconds West a distance of 11.00 feet to a Point marked by an iron pin placed; run thence North 02 degrees 15 minutes 48 seconds East a distance of 226.65 feet to a point marked by an iron pin placed; run thence North 01 degrees 20 minute 34 seconds West a distance of 163.70 feet to a point marked by a crimped top pipe; run thence South 66 degrees 02 minutes 34 seconds East 210.66 feet to a Point marked by a crimped top pipe; run thence South 00 degrees 52 minutes 35 seconds West a distance of 406.67 feet to a Point marked by an iron pin placed on the Northeasterly Right of Way of Old Milton Parkway f/k/a State Bridge Road, said Point being the True Place or Point of beginning.

EXHIBIT "B"

Additional Property

Any real property located within one (1) mile of the perimeter boundary of the real property described on Exhibit "A" attached hereto.

EXHIBIT "C"

BY-LAWS

OF

FOLIA' OLD MILTON HOMEOWNERS ASSOCIATION, INC.

Need Book 55923 Pg 660

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BY-LAWS
OF
FOLIA' OLD MILTON HOMEOWNERS ASSOCIATION, INC.

ARTICLE 1: NAME, PRINCIPAL OFFICE, AND DEFINITIONS

1.1. Name. The name of the corporation is Folia' Old Milton Homeowners Association, Inc. (the "Association").

1.2. Principal Office. The principal office of the Association shall be located in Fulton County, Georgia. The Association may have such other offices, either within or outside the State of Georgia, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions and Restrictions for Folia' Old Milton Townhomes filed in the Public Records, as it may be amended (the "Declaration"), unless the context indicates otherwise.

ARTICLE 2: ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

2.1. Membership. The Association shall have two (2) classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference. The Declarant may establish additional classes of membership as set forth in the Declaration.

2.2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate, either within the Properties or as convenient as is possible and practical. Meetings may be held by means of telephone conference, videoconference or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation by one of these methods shall constitute presence in person at such meeting.

2.3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Subsequent regular meetings shall be held annually on a date and at a time set by the Board.

2.4. Special Meetings. The president may call special meetings. In addition, it shall be the duty of the president to call a special meeting within thirty (30) Days if so directed by

resolution of the Board or upon a petition signed by Members representing at least twenty percent (20%) of the total Class "A" votes in the Association or upon written request of the Declarant.

2.5. Notice of Meetings. Written notice stating the place, day, and time of any meeting of the Members shall be delivered to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) Days before the date of such meeting, by or at the direction of the president or the secretary or the officers or persons calling the meeting.

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

2.6. Waiver of Notice. Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Association, either before or after such meeting. Attendance at a meeting shall be deemed a waiver of any objection as to notice of the time, date, and place thereof, unless specific objection as to the lack of proper notice is given at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Members or their proxies holding a Majority of the votes represented at such meeting may adjourn the meeting to a time not less than five (5) nor more than twenty (20) Days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not set by those in attendance at the original meeting or if for any reason a new date is set for reconvening the meeting after adjournment, notice for reconvening the meeting shall be given to Members in the manner prescribed in Section 2.5.

2.8. Voting. The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference. The Board may adopt policies and procedures regarding the methods of casting votes, such as written ballots, secret ballots or computer access.

2.9. List for Voting. After setting a record date for notice of a meeting, the Board shall prepare an alphabetical list of the names of the Members entitled to notice of such meeting. The list shall show the address of the Member and the number of votes each is entitled to vote at the meeting. The list for voting shall be made available for inspection in accordance with Georgia law.

2.10. Proxies. At all meetings of Members, each Member may vote in person (if a corporation, partnership, limited liability company, or trust, through any officer, director, partner, member, manager or fiduciary duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Georgia law relating to use of general proxies and subject to any

specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing specifying the Unit(s) for which it is given, signed by the Member or such Member's duly authorized attorney-in-fact, dated, and filed with the secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Unit for which it was given, or upon receipt of notice by the secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.

2.11. Quorum. The presence, in person or by proxy, of not less than five (5) Members or Members representing twenty percent (20%) of the total Class "A" votes entitled to be cast, whichever is greater, shall constitute a quorum at all meetings of the Association. If a quorum is present at a duly called or held meeting, business may be continued until adjournment, notwithstanding the withdrawal of Members leaving less than a quorum, provided that any action taken is approved by at least a Majority of the votes required to constitute a quorum.

2.12. Conduct of Meetings. The president shall preside over all meetings of the Association, and the secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Association may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote on such matter. Such consents shall be signed within sixty (60) Days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business in the State of Georgia filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) Days after receiving authorization for any action by written consent, the secretary shall give written notice to all Members summarizing the material features of the authorized action.

ARTICLE 3: BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

A. Composition and Selection.

3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) equal vote. Except with respect to directors appointed by the Class "B" Member or serving as a representative of the Declarant, the directors shall be eligible Members or residents; provided, however, no Owner and resident representing the same Unit may serve on the Board at the same time. No Owner or resident shall be eligible to serve as a director if any assessment for such Owner's or resident's Unit is delinquent. A "resident" for the purposes of these By-Laws shall mean any natural person eighteen (18) years of age or older whose principal place of residence is a Unit within the Properties. In the case of a Member which is not a natural person, any officer, director, partner,

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member, manager, employee, or fiduciary of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member, provided no Member may have more than one (1) such representative on the Board at a time, except in the case of directors appointed by or serving as representatives of the Class "B" Member or the Declarant.

3.2. Number, Nomination and Election of Directors. Except as provided in Section 3.3, the Board shall consist of three (3) directors elected by the Class "A" Members of the Association. The number of directors may be changed by resolution of the Board.

Elected directors shall be nominated from the floor at a meeting of the Members and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Each Owner may cast all votes assigned to such Owner's Units for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors shall be elected for a term of one (1) year and may be elected to serve any number of consecutive terms.

3.3. Directors During Class "B" Membership. All directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member during such time as the Class "B" membership exists; provided, however, the Class "B" Member may, in its sole discretion, allow the Class "A" Members to select one (1) or more directors during the existence of the Class "B" membership.

3.4. Removal of Directors and Vacancies. Any director elected by the Class "A" Members may be removed, with or without cause, by Members holding two-thirds (2/3) of the votes entitled to be cast for the election of such director, but shall not be subject to removal solely by the Class "B" Member. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three (3) or more consecutive unexcused absences from Board meetings, or who is more than thirty (30) Days delinquent (or is the resident of a Unit that is delinquent or is the representative of a Member who is delinquent) in the payment of any assessment or other charge due the Association, may be removed by a Majority of the directors, and the Board may appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members may elect a successor for the remainder of the term.

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

This Section shall not apply to directors appointed by the Class "B" Member nor to any director serving as a representative of the Declarant. The Class "B" Member or the Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member or the Declarant.

B. Meetings.

3.5. Organizational Meetings. Within thirty (30) Days after the election or appointment of new directors, the Board shall hold an organizational meeting at such time and place as the Board shall set.

3.6. Regular Meetings. Regular meetings of the Board may be held at such time and place as a Majority of the directors shall determine, but at least one (1) such meeting shall be held during each year.

3.7. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the president or vice president or by any two (2) directors.

3.8. Notice. Notice of a regular meeting shall be communicated to directors not less than four (4) Days prior to the meeting. Notice of a special meeting shall be communicated to directors not less than seventy-two (72) hours prior to the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. Notices shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; (d) telecopier transmission to the director's home or office, with confirmation of receipt by the receiving telecopier; (e) telegram, charges prepaid; (f) overnight or same day delivery, charges prepaid; or (g) electronic mail or e-mail using Internet accessible equipment and services if the director has consented in writing to such method of delivery and has provided the Board with an electronic mail or e-mail address. All such notices shall be given at the director's telephone or telecopier number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal, overnight or courier delivery, telephone, telecopier, telegraph, electronic mail, or e-mail shall be deemed communicated when delivered, telephoned, telecopied, electronically mailed, e-mailed or given to the telegraph company.

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

3.10. Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of telephone conference, video conference, or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

3.11. Quorum of Board of Directors. At all meetings of the Board, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a Majority of the directors present at such meeting may adjourn the meeting to a time not less than four (4) nor more than twenty (20) Days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

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

3.13. Conduct of Meetings. The president shall preside over all meetings of the Board, and the secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings. In the case of a tie vote on a motion or resolution before the Board, the motion or resolution is considered lost.

3.14. Open Meetings. Subject to the provisions of Sections 3.10 and 3.15, all meetings of the Board shall be open to all Members, but attendees other than directors may not participate in any discussion or deliberation unless permission to speak is requested on an attendee's behalf by a director. In such case, the president may limit the time any Member may speak. Notwithstanding the above, the president may adjourn any meeting of the Board, reconvene in executive session, and exclude Persons to discuss matters of a sensitive nature, such as, among other things, pending or threatened litigation or personnel matters.

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

C. Powers and Duties.

3.16. Powers. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done all acts and things which the Governing Documents or Georgia law do not direct to be done and exercised exclusively by the membership generally.

3.17. Duties. The duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;

(b) levying and collecting such assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;

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

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve and using such funds to operate the Association, provided any reserve funds may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules in accordance with the Declaration;

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

(h) contracting for repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the costs of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties; and

(o) indemnifying a director, officer or ARB or committee member, or former director, officer or ARB or committee member of the Association to the extent such indemnity is required or permitted under Georgia law or the Governing Documents.

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

The Board may delegate to one (1) of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.19. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;

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

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any item of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board; and

(f) an annual financial report shall be made available to all Members within one hundred twenty (120) Days after the close of the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines; provided, however, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement.

3.20. Borrowing. The Association shall have the power to borrow money for any legal purpose; provided, however, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall obtain the approval of Members holding at least sixty-seven percent (67%) of the total votes allocated to Units prior to borrowing such money.

3.21. Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations.

3.22. Enforcement.

(a) Notice. Prior to imposition of any sanction requiring compliance with these procedures as set forth in the Declaration, the Board or its delegate shall serve the alleged violator with written notice including (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator may present a written request for a hearing to the Board or the covenants committee, if one has been appointed pursuant to Article 5, within fifteen (15) Days of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within fifteen (15) Days of the notice. If a timely request is not received, the sanction stated in the notice shall be imposed; provided, however, the Board or covenants committee, as the case may be, may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fifteen (15) Day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. In the event of a continuing violation, each day the violation continues beyond the fifteen (15) Day period shall constitute a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one (1) year from the date of any notice hereunder, the Board or covenants committee, as the case may be, may impose a sanction without further notice to the violator. The Board may adopt a schedule of sanctions for violations of the Governing Documents.

(b) Hearing. If a hearing is requested within the allotted fifteen (15) Day period, the hearing shall be held before the covenants committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or delegate who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any. The Board may adopt a schedule of sanctions for violations of the Governing Documents.

(c) Appeal. If a hearing is held before a covenants committee, the violator shall have the right to appeal the committee's decision to the Board. To exercise this right, a written notice

of appeal must be received by the manager, president, or secretary of the Association within fifteen (15) Days after the hearing date.

ARTICLE 4: OFFICERS

4.1. Officers. The officers of the Association shall be a president, secretary and treasurer. The president and secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one (1) or more vice presidents, one (1) or more assistant secretaries and one (1) or more assistant treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two (2) or more offices may be held by the same person, except the offices of president and secretary.

4.2. Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each election of new directors. Such officers shall serve until their successors are elected.

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

4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The president shall be the chief executive officer of the Association. The treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The secretary shall be responsible for preparing minutes of meetings of the Association and the Board and for authenticating records of the Association.

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

4.6. Execution of Instruments. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by Board resolution.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.12.

ARTICLE 5: COMMITTEES

5.1. General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each

committee shall operate in accordance with the terms of such resolution. Unless otherwise provided by the Board, committee members shall be eligible Members or residents; provided, however, no Class "A" Member may have more than one (1) representative on a committee at any time. No committee appointed by the Board shall be empowered to take any affirmative action or to bind the Board or the Association without the consent of the Board.

5.2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to the Declaration, these By-Laws and, specifically, Section 5.1, the Board may appoint a covenants committee consisting of at least three (3) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the covenants committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.22 of these By-Laws.

ARTICLE 6: MISCELLANEOUS

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

6.2. Parliamentary Rules. Except as may be modified by Board resolution, *Robert's Rules of Order Newly Revised* (current edition) shall govern the conduct of Association proceedings when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, or these By-Laws.

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

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, By-Laws, and Articles of Incorporation, any amendments and supplements to the foregoing, the rules of the Association, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate during normal business hours.

(b) Rules for Inspection. The Board may establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any

reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

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

(a) if to a Member, at the address which the Member has designated in writing and filed with the secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

If mailed, any notice shall be deemed to be delivered when deposited in the United States mail addressed with postage prepaid. To increase flexibility, any Person, including the Association, may consent to or request in writing additional methods of receiving notice, including but not limited to, facsimile, electronic mail or e-mail.

6.6. Amendment.

(a) By Declarant. Until termination of the Class "B" membership, the Declarant may unilaterally amend these By-Laws for any purpose. Thereafter, the Declarant may unilaterally amend these By-Laws if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. In addition, during the Development Period, the Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member. The failure of an amendment to apply uniformly to all Units shall not constitute a material adverse effect upon the rights of any Owner.

(b) By the Board. The Board shall be authorized to amend these By-Laws without the consent of the Members (i) for the purpose of submitting the Properties to the Georgia Property Owners' Association Act, O.C.G.A. §44-3-220, *et seq.* (1994) and conforming these By-Laws to any mandatory provisions thereof; (ii) to correct scriveners' errors and other mistakes of fact, provided that any amendments under this provision have no material adverse effect on the rights of the Members; and (iii) for the purpose of bringing any provision contained herein into compliance with the Fair Housing Amendments Act of 1988, as more fully set forth in Section 14.5 of the Declaration. Except when the Board amends these By-Laws for the purpose set forth in Section 14.5 of the Declaration, during the Development Period, any such

amendments shall require the written consent of the Declarant.

(c) By Members. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Validity and Effective Date. Any amendment to these By-Laws shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

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

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

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Cathelene Robinson
Clerk of Superior Court
Fulton County, Georgia