

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR THE GATES AT VININGS

AND

BYLAWS OF THE GATES AT VININGS HOME OWNER'S ASSOCIATION, INC.

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE GATES AT VININGS AND BYLAWS is made on this **July 2, 2021** by **THE GATES AT VININGS HOME OWNER'S ASSOCIATION, INC.**, a Georgia nonprofit corporation (hereinafter sometimes called "Association").

W I T N E S S E T H

WHEREAS, Jason A. Lewis, as declarant (the "Developer") executed and recorded that certain Declaration of Covenants, Conditions, Restrictions and Easements for The Gates at Vinings, recorded on January 28, 1998, in Deed Book 10969, Page 361, *et seq.* of the real property records of the Clerk of the Superior Court of Cobb County, Georgia; as amended by Amendment to Declaration of Covenants, Conditions and Restrictions, dated August 19, 2000 and recorded in Deed Book 13290, page 6211, Cobb County, Georgia Records; as amended by Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for the Gates at Vinings, dated July 9, 2001 and recorded in Deed Book 13392, page 5657, Cobb County, Georgia Records; and as amended by Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for the Gates at Vinings, dated October 6, 2015, but effective as of September 28, 2015, and recorded in Deed Book 15284, page 3940, *et seq.* Cobb County, Georgia Records (as so amended, the "Original Declaration"); and

WHEREAS, the Bylaws of The Gates at Vinings Home Owner's Association, Inc. (the "Bylaws") were adopted by the Board of Directors of the Association; and

WHEREAS, pursuant to Article X, Section 7 of the Original Declaration, the Original Declaration may be amended at any time and from time to time by an agreement signed by at least seventy-five percent (75%) of the Owners of Lots; provided, however, such amendment by the Owners shall not be effective unless also signed by Developer, if Developer is the Owner of any real property then subject to the Original Declaration; and

WHEREAS, pursuant to Section 8.8 of the Bylaws, the Bylaws may be amended by the Board of Directors with at least two-thirds (2/3) of the eligible Owners' vote of approval; and

WHEREAS, Developer's signature is not required, as Developer does not own any real property subject to the Declaration; and

WHEREAS, the Association desires to amend certain provisions of and fully restate the Original Declaration and the Bylaws; and

WHEREAS, the Association and at least seventy-five percent (75%) of its Lot Owners desire to affirmatively elect to be governed by the Georgia Property Owners' Association Act; and

WHEREAS, at least seventy-five percent of the Owners of Lots have signed this instrument, as evidenced by their signatures hereto, consenting to the amendment and restatement of the Original Declaration and the proposed changes to the Bylaws; and

NOW, THEREFORE, the undersigned Association and at least seventy-five percent (75%) of its Lot Owners hereby declare that the real property described in Exhibit "A" attached hereto and by this reference incorporated herein is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, mortgaged and otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens, hereinafter set forth, which are for protecting the value and desirability of, and which shall run with the title to, the real property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of the real property now and hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each Owner of all or any portion thereof.

This instrument contains the signatures of the Association and at least seventy-five percent (75%) of the Owners of Lots evidencing their consent to and approval of this instrument.

ARTICLE I DEFINITIONS

Section 1. "Architectural Control Committee" shall mean and refer to those natural persons selected annually by the Board of Directors of the Association to serve as members of said committee. Such persons may also be members of the Board of Directors. The Architectural Control Committee shall be, and act as, an agent and representative of the Association.

Section 2. "Association" shall mean and refer to The Gates at Vinings Home Owner's Association, Inc., its successors and assigns.

Section 3. "Board" shall mean and refer to the Board of Directors of the Association, which Board is designated as the governing body of the Association.

Section 4. "Bylaws" shall mean those certain Bylaws of The Gates at Vinings Home Owner's Association, Inc. attached here to as Exhibit "B".

Section 5. "Common Area" shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners.

Section 6. "Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration and the Bylaws and Articles of Incorporation of the Association.

Section 7. "Declaration" shall mean the covenants, conditions, restrictions and easements and all other provisions herein set forth in this instrument, as may from time to time be amended.

Section 8. "Developer" shall mean and refer to Jason A. Lewis, who no longer owns any Common Area or other real property located in The Gates at Vinings, all such Common Area and other real property having been conveyed to the Association or to current or prior Owners.

Section 9. "Dwelling Unit" shall mean and refer to any improved property intended for use as a single family residence located on the Property.

Section 10. "Lot" shall mean and refer to any parcel of land shown upon any recorded subdivision plat of the Property upon which a single-family residence may be constructed.

Section 11. "Owner" shall mean and refer to the record Owner, whether one or more Persons, of the fee simple title to any Lot which is a part of the Property, but excluding those having such interest merely as security for the performance of any obligation.

Section 12. "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Section 13. "Plat" shall mean that certain Subdivision Plat for The Gates at Vinings filed in Plat Book 179, Page 31, Cobb County, Georgia Records, as amended.

Section 14. "Property" shall mean and refer to that certain real property described in Article II, Section 1 of this Declaration, together with such additional real property as may, by subsequent amendment, be added to and subjected to this Declaration.

Section 15. "Structure" shall mean and refer to: (i) any item or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation any improvement, building or part thereof; garage, porch, gazebo, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, tennis court, fence, curbing, paving, wall, tree, shrub, sign, signboard, mailbox, driveway, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot; (ii) any excavation, grading, fill ditch, diversion dam or other thing, object or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and (iii) any change in grade at any point on a Lot of more than six (6) inches, whether or not subsection (ii) of this Section 16, applies to such change.

Section 16. "The Gates at Vinings" shall mean and refer to the subdivision owned by the Owners and the Association consisting of the Property as hereinabove defined.

Any and all words or terms used herein with an initial capital letter or initial capital letters and not otherwise defined herein, but defined in the Georgia Property Owners' Association Act, shall have the meaning set forth in the Act.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION, ADDITIONS THERETO, AND SUBMISSION TO GEORGIA PROPERTY OWNERS' ASSOCIATION ACT

Section 1. The Property which is and shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration is more particularly described on Exhibit

“A” attached hereto and by reference made a part hereof, together with such additional real property as may, by subsequent amendment, be added and subjected to this Declaration.

Section 2. Submission to Georgia Property Owners’ Association Act; Conflict. The Property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject to the Georgia Property Owners’ Association Act, O.C.G.A. 44-3-220, *et seq.* (the “Act”) as the Act may be amended from time to time. In the event of a conflict between the provisions of this Declaration and the provisions of the Act, then to the extent that the provisions of the Act cannot be waived by agreement, the Act shall control.

ARTICLE III ARCHITECTURAL CONTROL COMMITTEE

Section 1. Purpose, Power and Duties of the Architectural Control Committee. The purpose of the Architectural Control Committee is to assure that the installation, construction or alteration of any Structure on any Lot is submitted to the Architectural Control Committee for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of The Gates at Vinings and with the standards of the development of the Property; and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the Architectural Control Committee shall have all of the powers and duties to do each and everything necessary, suitable, convenient or proper for, or in connection with or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

Section 2. Meetings. The Architectural Control Committee shall hold meetings as may be called by the Board or the Architectural Control Committee. Meetings of the Architectural Control Committee shall be held at such time and at such place as the Architectural Control Committee shall specify. Notice of each meeting of the Architectural Control Committee shall be mailed or emailed to each member thereof at the address designated by such member to such committee for the receipt of notices at least (2) days before the day the meeting is to be held. Notice of meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the Architectural Control Committee who signs a waiver of notice either before or after the meeting. Attendance of a member of the Architectural Control Committee at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all obligations with respect to the place of the meeting, the time of the meeting or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the Architectural Control Committee, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the Architectural Control Committee present at any meeting thereof, at which a quorum is present, shall constitute the act of the Architectural Control Committee. In the absence of a quorum, any member of the Architectural Control Committee present at the time and place of the meeting may adjourn the meeting from time to time until a quorum is present, whereupon any business may be transacted which might have been transacted at the meeting as originally called. Any action required to be taken at a meeting of the Architectural Control Committee may be taken without a meeting if written consent is obtained from all members of the Architectural Control Committee, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote.

Section 3. Action of Member of the Architectural Control Committee. Any member of the Architectural Control Committee may be authorized by the Architectural Control Committee to exercise the full authority of the Architectural Control Committee with respect to all matters over which the Architectural Control Committee has authority, as may be specified by resolution or consent of the Architectural Control Committee. The action of such member with respect to the matters specified shall be final and binding upon the Architectural Control Committee and upon any applicant for an approval permit or authorization, subject, however, to review and modification by the Architectural Control Committee on its own motion or appeal by the applicant to the Architectural Control Committee as provided herein. Written notice of the decision of the Architectural Control Committee shall, within five (5) days thereof, be given to any applicant for an approval permit or authorization. The applicant may, within (10) days after receipt of notice of any decision which the applicant deems to be unsatisfactory, file a written request to have the matter in question reviewed by the Architectural Control Committee. Upon the filing of any such request, the matter with respect to which such request was filed, shall be submitted to, and reviewed promptly by, the Architectural Control Committee, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the members of the Architectural Control Committee with respect to such matter shall be final and binding.

Section 4. Submission of Plans and Specifications. No landscaping in the front of a Dwelling Unit, no site work, and no Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefor shall have been first submitted to and approved in writing by the Architectural Control Committee. Two (2) copies of such plans and specifications shall be submitted in such form and shall contain such information as reasonably may be required by the Architectural Control Committee, including, without being limited to:

- a) A site plan showing the location of proposed and existing Structures on the Lot, including building setbacks, open space, driveways, walkways and parking spaces, including the number thereof;
- b) floorplans;
- c) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures appear after all back-filling and landscaping are completed;
- d) specifications showing the nature, kind, shape, height, materials, basic exterior finishes and colors of all proposed Structures and alterations to existing Structures, also showing front, side and rear elevations thereof, and
- e) plans for landscaping and grading.

Each Dwelling Unit to be constructed on a Lot shall contain a minimum of 2,500 square feet of living area for a one-story Dwelling Unit and 3,200 square feet of living area for a two-story Dwelling unit, exclusive of any spaces in garages and finished basements. All garages shall open from a side yard and no garage shall open on the street. No Dwelling Unit, inclusive of any garage, shall be located on any Lot nearer to the front lot line or the side street line than the minimum building set back lines designated on the Plat.

Section 5. Approval of Builders; Approval of Plans and Specifications. Any builder or landscaper, prior to performing any work on any Lot in the Property, first shall be approved by the Architectural Control Committee.

- a) The Architectural Control Committee shall have the right to approve or disapprove any plans and specifications submitted to it in its sole and uncontrolled discretion, which approval or disapproval may be based upon any grounds, including purely aesthetic considerations which shall be deemed sufficient.
- b) Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Control Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant that submitted the same. Approval of any plans and specifications for use in connection with any Lot or Structure shall not be deemed a waiver of the Architectural Control Committee's right, in its sole discretion, to disapprove the same or similar plans and specifications or any of the features or elements included therein if such plans, specifications, features, or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of such plans, specifications, features, or elements relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.
- c) Neither Developer, the Association, nor any member of the Board or the Architectural Control Committee shall be responsible or liable in any way for the defects in any plans or specifications approved by the Architectural Control Committee, nor for any defects in any work done according to such plans and specifications approved by the Architectural Control Committee. Further, approval of plans and specifications by the Architectural Control Committee shall not be deemed to represent or warrant to any Person the quality, function or operation of the Structure or of any construction, workmanship, engineering, materials or equipment. Neither Developer, the Association, nor any member of the Board or the Architectural Control Committee shall be liable for damages or in any other respect to anyone submitting plans or specifications for approval pursuant to this Article, or to any Owner, or to any other person having an interest in any of the Property by reason of mistake in judgment, negligence, misfeasance or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. By submission of such plans and specifications to the Architectural Control Committee, every Owner of any Lot releases and agrees to indemnify, hold harmless and defend Developer, the Association, and any member of the Board and the Architectural Control Committee from any such alleged liability, claim of liability, or damage, and from all related loss, cost or expense.

Section 6. Obligation to Act. The Architectural Control Committee shall take action on any plans and specifications submitted as herein provided within forty-five (45) days after receipt thereof. Approval

by the Architectural Control Committee, if granted, together with any conditions imposed by the Architectural Control Committee, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the Architectural Control Committee to take action within forty-five (45) days of the receipt of plans and specifications submitted for approval as required, shall be deemed approval of such plans and specifications.

Section 7. Right of Inspection. The Architectural Control Committee, its agents and representatives, shall have the right during reasonable hours to enter upon and inspect any Lot or Structures thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of the Declaration, and neither the Association, the Board, the Architectural Control Committee nor its members shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection. A specific assessment may be imposed upon such Lot Owner and such Lot for all direct and indirect costs and expenses of such inspection.

Section 8. Violations. Any action taken, made or performed on a Lot in violation of this Article III may be enjoined by the Architectural Control Committee, or the Lot may be required to be restored to its former condition by and at the expense of the Owner of the Lot. Upon the failure or refusal of such Lot Owner to perform the required restoration, the Architectural Control Committee through its authorized agents or employees, may, after fourteen (14) days' notice to said Lot Owner, enter upon the property (Lot or Dwelling Unit) and perform such restoration as the Architectural Control Committee, in the exercise of its sole discretion, may deem necessary or advisable. A specific assessment shall be imposed upon such Lot Owner and such Lot for all direct and indirect costs, including, without limitation, late charges, interest, court costs and reasonable attorney's fees as may be incurred in remedying such violation, and the liability for such costs shall be enforceable by the Association as provided in Article VI.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to this Declaration shall be a mandatory member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this Declaration and shall pass automatically to an Owner's successor-in-title to the Lot.

Section 2. Voting Rights. The Association shall have one class of voting membership. With respect to each Lot, its Owner shall be entitled to one vote. When the Owner of a Lot consists of more than one Person, (a) the vote for such Lot shall be exercised as such Persons determine among themselves, but in no event shall more than one vote be cast with respect to any Lot; and (b) if more than one Person holds an ownership interest in any Lot, a vote by any of such Persons with respect to such Lot shall be conclusive evidence that all Persons holding an ownership interest in that Lot consent to and approve the vote for such Lot.

ARTICLE V

PROPERTY RIGHTS

Section 1. Member's Easement of Enjoyment. Subject to the provisions herein, every member of the Association shall have a right and easement of use and enjoyment in and to the Common Area. This right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

- a) the right of the Association to adopt and publish rules and regulations governing the use of the Common Area.
- b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility now or hereafter located or constructed upon the Common Area and to impose reasonable limits on the number of guests who may use such recreational facilities.
- c) the right of the Association to suspend any Owner's voting rights and rights to use any recreational facilities within the Common Area for any period during which any assessment of the Association against said Owner's Lot remains unpaid.
- d) the right of the Association to borrow money for the purpose of improving the Common Area or any portion thereof, or constructing, repairing or improving any facilities located or to be located thereon, and, upon the assent of two-thirds (2/3) of the Owners, to give as security a mortgage conveying all or any portion of the Common Area. The lien and encumbrance of any such mortgage, however, shall be subject and subordinate to all rights, interests, easements and privileges herein reserved or established for the benefit of any Owner, or the holder of any mortgage, irrespective of when executed, given by any Owner.
- e) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Owners, agreeing to such dedication or transfer, has been recorded.
- f) the easements reserved in Article VIII of this Declaration.

Section 2. Delegation of Use. Any Owner may delegate in accordance with and subject to this Declaration and any applicable Bylaws, Rules or Regulations of the Association, the right of use and enjoyment in and to the Common Area and the improvements thereon, if any, to family members, guests and invitees.

Section 3. Title to Common Area. Pursuant to a conveyance by the Developer, the Association owns all of the Common Area. Notwithstanding any legal presumption to the contrary, the fee simple title to the Common Area, together with all rights therein, shall be reserved to the Association for the common use and enjoyment of the Owners.

Section 4. No partition. There shall be no judicial partition of the Property or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the Property has been removed from the provisions of this Declaration.

ARTICLE VI ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments; (b) special assessments; and, (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of the Declaration. All such assessments shall be deemed to include, in addition to the principal sum assessed, late charges,

interest (at a rate of ten percent (10%) per annum on the principal amount due), and court costs and reasonable attorney's fees incurred, all of which shall, from the time the sums become due and payable, be a charge on the land and shall be a continuing lien in favor of the Association on the Lot against which each assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each such assessment, including such late charges, interest, costs and attorney's fees shall also be the personal obligation of the person who was the Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to the principal amount due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the health, safety, pleasure and welfare of the Owners of the Lots and the costs and expenses incident to the operation of the Association, including, without limitation, the maintenance and repair of the Common Area and improvements thereof, if any, the maintenance of services furnished by the Association, the purchase of insurance by the Association, the repair and replacement of improvements on the Common Area, payment of all taxes, insurance premiums and all costs and expenses incidental to the operation and administration of the Association, and establishment and maintenance of a reasonable reserve fund or funds.

Section 3. Computation of Annual Assessments. It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget and annual assessment covering the estimated Common Expenses of operating the Association and the Common Area, including a reasonable reserve, for the coming year. Each Lot Owner shall pay its Lot assessment. The budget and the proposed annual assessment to be levied against each Lot shall be delivered to each Owner no later than fifteen (15) days prior to such annual meeting. The annual assessment shall be equally divided among the Lots so that the annual Lot assessments shall be the same for each Lot. The budget and the annual assessment shall become effective unless disapproved at the annual meeting by a vote of a majority of the Owners voting in person or by proxy at such meeting. In the event the proposed budget or the annual assessment is not approved or the Board fails for any reason to determine the budget or annual assessment for the succeeding year, then until a budget and annual assessment have been determined as provided herein, the budget and annual assessment in effect for the then current year shall continue for the succeeding year. If any budget or annual assessment at any time proves inadequate for any reason, the Board may call a meeting of the Association for the approval of a special assessment.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any (a) budget shortfall; (b) construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures

and personal property related thereto, provided that any such assessment shall have the assent of at least two-thirds (2/3) of the Owners voting in person or by proxy at a meeting duly called for such purpose. Special assessments may also be levied by the Association if for any reason the annual assessment proves inadequate to defray the expenses of the Association in fulfilling its duties and obligations hereunder, subject to the consent of the Owners as set forth above. Special assessments shall be equally divided among the Lots so that the special Lot assessment shall be the same for each Lot.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 or 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 above shall be sent to all members not less than twenty-one (21) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or their proxies, entitled to cast fifty (50%) percent of all the votes of Owners, shall constitute a quorum.

Section 6. Collection of Annual and Special Assessments. Annual and special assessments may be collected on a monthly, annual or semi-annual basis.

With reference to Lots conveyed during the year, the annual assessment provided for herein shall begin as to any Lot on the first day of the month next following the date on which title to the Lot is conveyed to the Lot Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year when title to the Lot is transferred.

Section 7. Date of Commencement of Annual Assessments; Due Dates; Obligation to Provide Statement of Amounts Due. The annual assessments provided for herein shall be paid in such manner and on such dates as may be fixed by the Board. Any Lot Owner, mortgagee of a Lot, Person having executed a contract for the purchase of a Lot, or lender considering the loan of funds to be secured by a Lot shall be entitled upon request to a statement from the Association or its agent setting forth the amount of assessments and whether paid current or past due and unpaid together with late charges and interest applicable thereto against that Lot. The Association shall, upon request and payment to the Association of a fee as permitted by the Act, furnish a statement signed by an officer of the Association setting forth the information requested. The information specified in such statement shall be binding upon the Association and upon every Lot Owner.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments, including annual assessments, special assessments and specific assessments, or installments thereof, which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in the amount of Ten percent (10%) of the amount due and interest shall be imposed at a rate of ten percent (10%) per annum on the principal amount due and on the late charge. The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may

institute suit to collect such amounts, to foreclose its lien, or both. If such a suit is instituted, in addition to outstanding assessments, including late charges and interest, the Association shall be entitled to recover its costs of collection, including, without limitation, court costs and reasonable attorney's fees actually incurred. The assessments and lien shall include all late charges, interest, costs and attorney's fees. The Association may file a claim of lien with the Office of the Clerk of Superior Court of Cobb County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments. Each Owner, by acceptance of a deed vests in the Association the right and power to bring all actions against such Owner personally for the collection as a debt, or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to any common property or Common Area (other than access to such Owner's Lot) and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such Owner's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such Lot in favor of the Association.

No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to the principal amount due.

Section 9. Subordination of the Lien to First Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, first purchase money security deed, or security deed representing a first lien on any Lot. The sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof shall extinguish the lien of assessments due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Area; (c) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provision contained herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

ARTICLE VII
MAINTENANCE AND COMMON AREA TAXES

Section 1. Association's Responsibility. Except as otherwise provided for herein, the Association shall maintain and keep in good repair all portions of the Common Area and improvements thereon, if any. The Association's responsibility with respect to the Common Area shall be deemed to include the (a) payment of all taxes with respect to the Common Area assessed by the governmental authority having jurisdiction over the Property and (b) the maintenance, repair and replacement of (i) all roads, driveways, walks, parking areas and buildings and other improvements, if any, situated within the Common Area; (ii) such utility lines, pipes, plumbing, wires, conduits and systems which are a part of the Common Area; and (iii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Area.

Section 2. Owner's Responsibilities. Each Owner of a Lot, whether vacant or occupied shall keep and maintain such Lot and the exterior of any and all improvements located thereon in a neat, attractive and safe condition. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing and care for roofs, gutters, downspouts, building surfaces, trees, shrubs, grass, walks, driveways and other exterior improvements. Should any Owner of a Lot fail to maintain such Lot or the improvements thereon as set forth hereinabove, the Architectural Control Committee, acting through its agents and representatives, may, after twenty (20) days written notice to the Owner of such Lot, enter upon the Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds or other unsightly growth, for removing garbage or trash, or for performing such exterior maintenance as the Architectural Control Committee, in exercise of its sole discretion, deems necessary or advisable. In such event, a specific assessment shall be imposed upon such Lot Owner and such Lot for all direct and indirect costs, including, without limitation, late charges, interest, court costs and reasonable attorney's fees as may be incurred due to such maintenance, and the liability for such costs shall be enforceable by the Association as provided in Article VI. Although notice given as herein provided shall be sufficient to give the Architectural Control Committee, its agents and representatives, the right to enter upon such Lot and perform such maintenance, entry for such purpose shall be only between the hours of 9:00 a.m. and 5:00 p.m. on any day except Sunday. The provisions hereof shall not be construed, however, as an obligation on the part of the Association to mow, clear, cut or prune any Lot, to provide garbage or trash removal service, or to perform such exterior maintenance.

Section 3. Garden Park Drive and Iron Gate Drive. Garden Park Drive and Iron Gate Drive (individually, a "Road" and collectively, the "Roads") are not owned by the Association. Each Owner owns the portion of the Road in front of its Lot to the centerline of the Road, all as shown on the Plat.

On June 15, 2003, each Owner granted to the Association an easement for the maintenance and repair of the Roads and any utilities under the Roads. The purpose of this Section is to set forth (i) those maintenance and repair obligations for which an Owner of a Lot is responsible to undertake and pay, and (ii) those maintenance and repair obligations for which the Association is responsible to undertake and pay.

(A) Each Owner shall be responsible for the performance and cost of any and all maintenance and repair of:

(1) such Owner's Lot and all improvements located on such Lot, including without limitation, buildings, landscaping and fencing, understanding that certain improvements shall be preapproved by the Architectural Control Committee as provided in the Declaration and Bylaws;

(2) all utilities serving such Owner's Lot, including without limitation, all pipes, lines, cables and other conduits transmitting such utilities, including those under the Roads if it is determined that the Owner caused damage due to construction, tampering or failure to follow utility code with the utility lines on Owner's Lot; and

(3) water and sewer lines serving the Owner's Lot from the meter or curb.

Should any Owner of a Lot fail to maintain or repair such Lot or such improvements as set forth hereinabove, the Association, acting through its agents and representatives, may, after (a) twenty (20) days written notice of a violation of Subsection (A)(1) above, or (b) twenty four (24) hours written notice of a violation of Subsection (A)(2) or (3) above, enter upon the Lot for the purpose of remedying such violation and take such action as it, in exercise of sole discretion, deems necessary or advisable. In such event, a specific assessment shall be imposed upon such Lot Owner and such Lot for all direct and indirect costs, including, without limitation, late charges, interest, court costs and reasonable attorney's fees as may be incurred due to such maintenance or repair, and the liability for such costs shall be enforceable by the Association as provided in Article VI.

(B) The Association shall be responsible for the performance and cost of any and all maintenance and repair of:

(1) the Common Areas (except when such maintenance or repair is required due to the fault of the Owner as provided in Subsection 3(A) (2) above);

(2) the Roads (except when such maintenance or repair is required due to the fault of the Owner as provided in Subsection 3(A) (2) above);

(3) main pipes, lines, cables and other conduits transmitting utilities and serving The Gates at Vinings;

(4) that portion of a Lot Owner's pipes, lines and other conduits transmitting utilities and extending from the Owner's meters to the main utility lines unless it is determined that the damage was caused by the Owner's negligence or intentional acts;

(5) wall along Cooper Lake Drive and retaining walls in the park;

(6) fire hydrants;

(7) lighting along the Roads and in the Common Areas; and

(8) the gazebo area in the Iron Gate Drive cul-de-sac.

ARTICLE VIII
EASEMENTS

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

There is hereby granted a blanket easement upon, across, over and under the Property subject to this Declaration or any portion thereof abutting all drainage and utility easements shown on the Plat, for ingress, egress, installation, replacing, repairing and maintaining all drainage easement areas and all utilities, including, but not limited to water, sewer, telephone and electricity. The easements provided for in this Article VIII shall in no way affect any other recorded easements on said Property. A utility company providing service to the Property shall leave all areas disturbed in the same condition that said disturbed areas were in prior to the commencement of any work hereunder.

ARTICLE IX
GENERAL COVENANTS AND RESTRICTIONS

The following covenants and restrictions shall apply to all Lots and to all Structures erected or placed thereon.

Section 1. Residential Use. All Lots shall be restricted to single-family residential use.

Section 2. Common Area. The Common Area shall be used only by the Owners and their agents, servants, family members, invitees and licensees for their common use and enjoyment, for access, ingress to and egress from their respective Lots, and for such other purposes as may be authorized by the Association.

Section 3. Nuisances.

- a) No unlawful, noxious or offensive activities shall be carried on in any Lot or upon the Common Area, nor shall anything be done therein or thereon which in the judgment of the Board, constitutes a nuisance, causes unreasonable noise or disturbance of others or unreasonably interferes with other Owners' use of their respective Lots or the Common Area.

- b) No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of any Owner's Lot so as to render the same unsanitary, unsightly or offensive. No nuisance shall be permitted to exist upon any portion of the Property. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Property or any portion thereof.

Section 4. Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the Architectural Control Committee of plans and specifications for such split, division or subdivision.

Section 5. Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for the prevention and control of such erosion or siltation. The Architectural Control Committee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and landscaping as may be required by the Architectural Control Committee.

Section 6. Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the Architectural Control Committee of plans and specifications for the landscaping to accompany such construction or alteration.

Section 7. Temporary Buildings. No Owner, contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot without the prior written consent of the Architectural Control Committee.

Section 8. Signs.

- a) Without the Architectural Control Committee's prior written approval of plans and specifications therefor, no signs shall be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:
 - 1. such signs as may be required by legal proceedings;
 - 2. a sign identifying the builder of the residence on the Lot; provided, however that in no event shall any such sign be larger than four square feet in area;
 - 3. not more than one "For Sale" sign; provided, however, that in no event shall any such sign be larger than four square feet in area; and,
 - 4. directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the Architectural Control Committee.
- b) Following the consummation of the sale of any Lot, the "For Sale" sign and the builder's sign located thereon, if any, shall be removed immediately.

Section 9. Setbacks. In approving plans and specifications for any proposed Structure the Architectural Control Committee may establish setback requirements for the location of such Structures

which are more restrictive than those established by the Plat. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

Section 10. Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for such fences and walls.

Section 11. Road and Driveways. No road or driveway shall be constructed or altered on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for such road or driveway. Such specifications shall include the proposed substance to be used in constructing such road or driveway, which substance shall be satisfactory to the Architectural Control Committee.

Section 12. Antennae. No antenna, satellite dish or other device for the transmission or receipt of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected used or maintained on the exterior of any Structure without the prior written approval of the Architectural Control Committee. In no event shall freestanding transmission or receiving towers be permitted.

Section 13. Clotheslines. No outside clotheslines shall be placed on any Lot.

Section 14. Recreational Vehicles, Trailers and Boats. The Architectural Control Committee in reviewing the plans and specifications for any proposed Structure, may require that special parking areas be made available for recreational vehicles. No trailer, trailer house, boat or other recreational vehicle shall be parked on any Lot, except on such parking areas as specified by the Architectural Control Committee pursuant to this Section 14, or within enclosures or behind screening erected in accordance with plans and specifications submitted to and approved by the Architectural Control Committee. While nothing contained herein shall prohibit the use of portable or temporary buildings or trailers as field offices by contractors during construction, the use, appearance and maintenance of such a building or trailer must be specifically approved by the Architectural Control Committee prior to its being moved onto the construction site.

Section 15. Recreational Equipment. No recreational or playground equipment shall be placed or installed on any Lot which is visible from the street abutting such Lot.

Section 16. Accessory Structures. A detached accessory Structure may be placed on a Lot to be used for a playhouse, swimming pool, tennis court, tool shed, mailbox, doghouse or garage. A garage may also be an attached accessory Structure. Such accessory Structures shall not exceed 20 feet in height and shall conform in exterior design and quality to the dwelling on the same Lot. With the exception of a garage that is attached to a dwelling, any accessory Structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot. Such accessory Structures shall also be located within such side and rear setback lines as may be required hereby or by applicable zoning law. The Architectural Control Committee shall have the right to approve or disapprove the plans and specifications for any accessory Structure to be erected on any Lot, and construction of any accessory Structure shall not be commenced until complete final plans and specifications shall have been submitted to and approved by the Architectural Control Committee in accordance with the provisions of these covenants. Any accessory Structure shall be constructed concurrently with or subsequent to the construction of the dwelling on the Lot on which such accessory Structure is located.

Section 17. Improvement of Lots. All construction of dwellings, accessory Structures and all other improvements in The Gates at Vinings shall be undertaken and completed in accordance with the following conditions;

- a) All construction shall be carried out in compliance with the laws, codes, rules, regulations and orders of all applicable government agencies and authorities.
- b) All single-family residences constructed on the Lots shall be “traditional” or “European” style. The determination of whether or not a residence is “traditional” or “European” shall be decided by the Architectural Control Committee in its sole uncontrolled discretion.
- c) All foundations when exposed shall either be stucco or brick, and there shall be no chain-link fences, or fences or walls of any other material, which the Architectural Control Committee determines to be incompatible with dwellings or other Structures in The Gates at Vinings.
- d) Only one conforming mailbox shall be located on any Lot, and such mailbox shall be the same for all homes.
- e) No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices or any other materials or devices used for building purposes shall be stored on any Lot except for the purpose of construction of a Dwelling Unit or accessory Structures on such Lot, nor shall any such materials or devices be stored on any such Lot for longer than the length of time reasonably necessary for such construction.
- f) No exposed, above-ground tanks shall be located on any Lot other than apparatus relating to solar energy, the location and design of which shall first be approved by the Architectural Control Committee.
- g) Adequate off-street parking shall be provided for each Lot.
- h) Containers for garbage and other refuse shall be screened; no incinerators for garbage, trash or other refuse shall be used, and a garbage disposal is required for each Dwelling Unit.
- i) All garages shall have doors, and each garage door shall be coordinated with the Dwelling Unit to which it is appurtenant.
- j) No window air conditioning unit shall be located in any part of any Dwelling Unit or accessory Structure which would be visible from any street, and all exterior compressor units shall be ground mounted and screened by fencing or planting of a density and height to hide the unit effectively, which fencing or planting shall first be approved by the Architectural Control Committee.
- k) Any screen porch which is part of any Dwelling Unit or accessory Structure shall have a dark color screen, and no bright color silver finish screens shall be used on sides nor in front.
- l) No plumbing vent or heating vent shall be placed on the front side of any roof of any Dwelling Unit or accessory Structure.
- m) Any damage caused by storms or other catastrophic event shall be repaired or cleared up by Owner within 30 days.

Section 18. Animals. No animals, including birds, insects and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes; provided, however, no barnyard animals, including, without limitation, pigs, cows, hens, roosters, or horses, may be kept on any Lot regardless of whether such animal might also be a pet. No animals shall be allowed to become a

nuisance. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for such Structure have first been approved by the Architectural Control Committee.

Section 19. Water Supply. No individual water supply system shall be permitted on any Lot without the prior written approval of the Architectural Control Committee. If such approval is given, such system shall be located, constructed and equipped in accordance with the requirements, standards and recommendations of federal, state and local public health authorities, and all necessary approvals of such system as installed shall be obtained from such authorities at the sole cost and expense of the Owner of the Lot to be served by such system.

Section 20. Trees and Shrubs. No trees measuring 18 inches or more in diameter at a point two (2) feet above ground, no flowering trees or shrubs, nor any evergreens on any Lot may be removed without the prior approval of the Architectural Control Committee unless located within ten (10) feet of the approved site for a Dwelling Unit or within the right of way of driveways or walkways. Excepted herefrom shall be damaged or dead trees and trees which must be removed due to an emergency or potential for hazard or emergency.

Section 21. Violations. Any action taken, made or performed in violation of Sections 1 through 20 above may be enjoined by the Architectural Control Committee, or the Lot may be required to be restored to its former condition by and at the expense of the Owner of the Lot. Upon the failure or refusal of such Lot Owner to perform the required restoration, the Architectural Control Committee, through its authorized agents or employees, may, after fourteen (14) days' notice to said Lot Owner, enter upon the property (Lot or Dwelling Unit) and perform such restoration as the Architectural Control Committee, in the exercise of its sole discretion, may deem necessary and advisable. A specific assessment shall be imposed upon such Lot Owner and such Lot for all direct and indirect costs, including, without limitation, late charges, interest, court costs and reasonable attorney's fees as may be incurred in remedying such violation, and the liability for such costs shall be enforceable by the Association as provided in Article VI. Additionally, the Board is authorized to fine any Owner that violates any of the terms contained in Sections 1 through 20 of this Article IX in such amount as is reasonable under the circumstances which fine shall also constitute a lien against such Owner's Lot and shall be included in the specific assessment imposed against such Owner and such Owner's Lot.

Section 22. No Rental or Leasing.

(a) All Dwelling Units, and any parts thereof, within The Gates at Vinings shall be Owner occupied.

(b) No Lot or Dwelling Unit, or any part thereof, may be rented or leased to others by the Owner or by any other person or entity.

(c) The Board is authorized to take any steps it deems necessary to enforce this Section 22, including, but not limited to, imposition of fines as provided herein, and any other legal and equitable action as provided hereinafter.

(d) The Board is authorized to impose a specific assessment against any Owner that violates the terms of this Section 22 in an amount equal to the total gross rental or lease payments, or other compensation, received either directly or indirectly in violation of this Section 22, plus interest, costs and reasonable attorney's fees incurred and any fine imposed as provided below which assessment shall also constitute a lien against such Owner's Lot. The amount of such specific assessment and the related lien shall continue to accrue monthly until the violation is corrected and the specific assessment is paid. Additionally, the Board is authorized to fine any Owner that violates the terms of this Section 22 up to One Hundred Dollars (\$100.00) per calendar day, which fine shall also constitute a lien against such Owner's Lot. Such fine shall begin to accrue thirty (30) days after the Association has mailed notice of the violation to the Owner of the Lot by certified mail, if the violation has not been corrected in that time, and shall continue to accrue daily until the violation is corrected.

ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement.

- a) The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provision of this Declaration or any Rule adopted pursuant to this Article X, Section 2. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained, or Rule adopted, shall in no event be deemed a waiver of the right to do so thereafter.
- b) The Association shall have the right of abatement in all cases where an Owner of a Lot shall fail to take reasonable steps to remedy a violation or breach of any provision contained in this Declaration, or in any Rule so adopted, within the time provided for notice of such violation or breach herein. The right of abatement means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation or breach exists, and to take such action or actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation or breach, all without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions.

Section 2. Rule Making Authority and Procedures.

a) Authority.

(i) Subject to the terms of this Section 2, and its duty to exercise business judgment and act reasonably, the Board may adopt rules applicable to the Common Area or Lots. Except to the extent that the Declaration or Bylaws specifically assign authority to regulate a particular matter to the Board, any rulemaking action by the Board may be overturned by a majority vote of the Owners. The Board shall have no obligation to call for a vote of the Owners except upon receipt of a petition of the Owners calling for a special meeting, as provided for in the Bylaws. Subject to the terms of this Section 2, at a special meeting of the Association called in accordance with the Bylaws, the Owners may adopt rules applicable to the Common Area or Lots upon the approval of a majority of the Owners.

(ii) The procedures required under this Section 2 shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, parking regulations and traffic controls.

b) Notice to Owners. No rulemaking action shall be taken unless and until a meeting of the Board or the membership has been called to consider and discuss the proposed action. The notice of any meeting at which a rulemaking action is to be considered shall state that fact. Members shall have a reasonable opportunity to be heard at such meeting prior to any vote being taken on the proposed action. At least ten (10) days prior to the effective date of any rulemaking action approved under this Section 2, the Board shall send a notice to each Owner describing the action and its effective date.

c) Violation. If an adopted Rule so provides, the violation of a Lot Owner of such Rule shall subject (A) the Lot Owner to personal liability to the Association for all direct and indirect costs, including, without limitation, late charges, interest, court costs and reasonable attorney's fees incurred, together with any fines imposed, and (B) such Lot to a specific assessment and lien for such costs and fines, and the liability for such costs and fines shall be enforceable by the Association as provided in Article VI.

Section 3. Severability. If any provision of this Declaration, or any paragraph, subparagraph, article, section, sentence, clause, phrase, word or the application thereof in any circumstances, is held invalid, the validity of the remainder of this Declaration and the application of any such provision, paragraph, subparagraph, article, section, sentence, clause or word in any other circumstance shall not be affected thereby and the remainder of this Declaration shall be construed as if such invalid part was never included herein.

Section 4. Headings. The headings of articles and sections in this Declaration are for convenience of reference only and shall not in any way limit or define the content or substance of such articles and sections.

Section 5. Duration. All of the Property shall be held, sold, used, and conveyed subject to the terms of this Declaration which shall run with the title to such Property. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner of any portion of the Property.

The covenants and conditions of this Declaration shall run with and bind the Property perpetually to the extent provided in the Act.

Section 6. Rights and Obligations. Each grantee of Developer or an Owner, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any Person having at any time any interest or estate in the Property or any portion thereof and shall inure to the benefit of such grantee in a like manner as though

the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

Section 7. Notices. Notices provided for in this Declaration shall be in writing and shall be addressed to any Owner at such Owner's Lot address or at such other address as hereinafter provided. Notices to the Association or Board shall be in writing and shall be addressed to the Association's registered agent or at such different address designated by the Association or Board for receipt of notices hereunder. The Board or any Owner may designate a different address for notices by giving written notice to the Association. Notices addressed as above shall be deemed delivered (i) three (3) business days after depositing such notice in the United States mail by United States registered or certified mail return receipt requested, or (ii) when delivered in person.

Section 8. Amendment. This Declaration may be amended at any time and from time to time upon the affirmative vote or written consent of Owners of at least two-thirds (2/3) of the Lots. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given.

Section 9. No Liability. The Association and the Board using best efforts and all due diligence, have prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration, or any part thereof, is, for any reason whatsoever, held to be unenforceable by an Owner (or any other person) in a court of law or otherwise, neither the Association, the Board nor any Owner, either jointly or individually, shall have any liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that neither the Association, the Board nor any such Owner shall have any such liability.

Exhibit "A"

All that tract or parcel of land lying and being in Land Lots 623 and 674 of the 17th District, 2nd Section of Cobb County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin found on the southeastern right-of-way line of Charleston Trail (50 foot right-of-way) at a point which is located 244.69 feet as measured along said southeastern right-of-way line in a southwestern direction from its point of intersection with the right-of-way line of Laurel Creek Trail (undetermined right-of-way) and running thence South 50 degrees 50 minutes 23 seconds East a distance of 80.61 feet to an iron pin found; running thence South 89 degrees 34 minutes 54 seconds East a distance of 626.77 feet to an iron pin found on the land lot line common to Land Lots 623 and 674 of said District; thence along said common land lot line South 01 degree 29 minutes 02 seconds West a distance of 207.60 feet to an iron pin found; thence leaving said common land lot line and running thence North 87 degrees 53 minutes 34 seconds East a distance of 271.30 feet to an iron pin found on the northwestern right-of-way line of Cooper Lake Drive (40 foot right-of-way); running thence southwesterly along said northwestern right-of-way line of Cooper Lake Drive the following courses and distances: South 47 degrees 56 minutes 39 seconds West a distance of 150.00 feet to a point; thence along the arc of a curve to the left (said arc being subtended by a chord bearing South 43 degrees 21 minutes 36 seconds West a chord distance of 187.81 feet and having a radius of 925.00 feet) an arc distance of 188.13 feet to a point; thence South 34 degrees 01 minutes 01 seconds West a distance of 92.00 feet to a point; thence along the arc of a curve to the right (said arc being subtended by a chord bearing South 36 degrees 35 minutes 07 seconds West a chord distance of 208.44 feet and having a radius of 2570.00 feet) an arc distance of 208.50 feet to a open top found at the land lot line common to Land Lots 622 and 623 of said District; thence leaving said northwestern right-of-way line of Cooper Lake Drive and running along the land lot line common to Land Lots 622 and 623 North 89 degrees 15 minutes 31 seconds West a distance of 492.00 feet to a 1/4 open top found; thence leaving said land lot line common to Land Lots 622 and 623 and running North 01 degrees 18 minutes 43 seconds East a distance of 435.00 feet to an iron pin found; running thence North 01 degrees 18 minutes 43 seconds East a distance of 47.77 feet to an iron pin found; running thence North 49 degrees 57 minute 12 seconds West a distance of 197.96 feet to an iron pin found on the southeastern right-of-way line of Charleston Trail; running thence along said right-of-way line of Charleston Trail North 38 degrees 32 minutes 53 seconds East a distance of 150.00 feet to an iron pin found, which iron pin marks the POINT OF BEGINNING; being shown as containing 10.738 acres on that certain plat of survey prepared for Sandra J. Bevins by J.A. Evans & Associates, James A. Evans, Jr., Georgia Registered Land Surveyor No. 2167, dated September 11, 1996.

LESS AND EXCEPT from the above described property, the property hereinafter described:

All that tract or parcel of land lying and being in Land Lot 623 of the 17th District, 2nd Section of Cobb County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin found on the southeastern right of way of Charleston Trail (having a 50 foot right of way), 244.69 feet southwesterly, as measured along the southeastern right of way of Charleston Trail from the intersection of the southeastern right of way of Charleston Trail with the southwestern right of way of Laurel Creek Trail, thence South 50° 50' 23" East a distance of 155.81 feet to an iron pin found; thence South 84° 55' 29" East a distance of 345.63 feet to an iron pin placed; thence South 00° 25' 06" West a distance of 76.93 feet to an iron pin placed; thence South 44° 33' 39" East a distance of 31.46 feet to an iron pin placed; thence along an arc of a curve to the left a distance of 23.66 feet to an iron pin placed (said arc being subtended by a chord having a bearing of South 65° 55' 04" West and a distance of 23.44 feet); thence North 44° 54' 03" West a distance of 60.40 feet to an iron pin placed; thence North 66° 50' 10" West a distance of 108 feet to an iron pin placed; thence South 09° 12' 02" east a distance of 85 feet to an iron pin placed; thence South 15° 31' 10" West a distance of 55.04 feet to an iron pin placed; thence South 09° 10' 59" East a distance of 125 feet to an iron pin placed; thence North 88° 29' 54" West a distance of 35.57 feet to an iron pin placed; thence South 83° 51' 11" West a distance of 95 feet to an iron pin placed; thence North 58° 12' 51" West a distance of 156.49 feet to an iron pin placed; thence North 01° 18' 43" East a distance of 76 feet to an iron pin placed; thence North 49° 57' 12" West a distance of 227.44 feet to an iron pin found on the southeastern right of way line of Charleston Trail; thence along the southeastern right of way line of Charleston Trail North 38° 32' 53" East a distance of 150 feet to an iron pin found at the **POINT OF BEGINNING**; said tract containing 2.475 acres as shown on plat prepared for Jason Lewis by J. A. Evans & Associates, dated December 3, 1996 and certified by James A. Evans, Jr., Georgia Registered Land Surveyor No. 2167, which survey is incorporated herein by reference and made a part hereof.

Legal Description

All that tract or parcel of land lying and being in Land Lot 622 of the 17th District and 2nd Section of Cobb County, Georgia, and being more particularly described as follows:

Beginning at the intersection of the north line of said Land Lot with the northwestern right of way line of Cooper Lake Road; thence along said north Land Lot line North 89°15'31" West a distance of 492.00 feet to an iron pin; thence continuing along said north Land Lot line North 89°03'01" West a distance of 302.51 feet to a crimp top pipe found; thence South 37°29'15" East a distance of 325.01 feet to a 1/4 inch open top pipe found; thence South 43°27'22" East a distance of 200.30 feet to a crimp top pipe found inside an open top pipe located on the northwestern right of way line of Cooper Lake Road; thence northeasterly along the northwestern right of way line of Cooper Lake Road the following courses and distances: an arc distance of 72.37 feet to a point (said arc being subtended by a chord having a bearing of North 49°51'34" East and a distance of 72.35 feet); North 52°16'56" East a distance of 83 feet to a point; an arc distance of 247.03 feet to a point (said arc being subtended by a chord having a bearing of North 50°10'50" East and a distance of 246.97 feet); North 48°04'43" East a distance of 128.69 feet to a point; an arc distance of 72.76 feet to the Point of Beginning (said arc being subtended by a chord having a bearing of North 46°11'14" East and a distance of 72.75 feet). Said tract containing 3.7732 acres as shown on Survey for Jason Lewis, prepared by J.A. Evans & Associates dated October 17, 1997 and certified by James A. Evans, Jr., Georgia Registered Land Surveyor No. 2167, which survey is incorporated herein by reference and made a part hereof.

EXHIBIT "B"

BYLAWS

(See Attached)

AMENDED & RESTATED
BYLAWS
OF
THE GATES AT VININGS HOME OWNER'S ASSOCIATION, INC.

ARTICLE 1

Definitions

The following terms shall have the following meanings:

1.1 “Association” shall mean The Gates at Vinings Home Owner’s Association, Inc., a Georgia nonprofit membership corporation.

1.2 “Board of Directors” or the “Board” shall mean those individuals elected by the Owners pursuant to Article 4 hereof to govern the affairs of the Association.

1.3 “Declaration” shall mean Declaration of Covenants, Conditions, Restrictions and Easements for the Gates at Vinings recorded in Book 10969, page 361, Cobb County, Georgia, Records, as such document has been and may be amended from time to time in accordance with its terms.

1.4 “Officer” shall mean each individual who is elected by the Board of Directors to serve as President, Vice President, Secretary or Treasurer, or such other subordinate office as the Board of Directors may determine necessary. An Officer is not required to be a member of the Board of Directors.

1.5 “The Gates at Vinings” shall mean the subdivision known as The Gates at Vinings in Smyrna, Cobb County, Georgia, and which is more particularly described in the Declaration.

Other terms used in these Bylaws with an initial capital letter or initial capital letters and not otherwise defined herein shall have the meanings given such terms in the Declaration, the Articles of Incorporation, the Georgia Nonprofit Corporation Code or the Georgia Property Owners Association Act O.C.G.A. 44-3-220, *et seq.* (the “Act”). All other terms used in these Bylaws shall be given their natural meanings.

ARTICLE 2

General

2.1 Applicability. These Bylaws provide for the governance of the Association in accordance with the Articles of Incorporation for the Association and the Declaration.

2.2 Name. The name of the Association is The Gates at Vinings Home Owner's Association, Inc.

2.3 Membership. Each Owner by accepting a deed to any Lot shall automatically become a member of the Association upon taking title to such Lot and shall remain a member for the entire term and period of ownership.

2.4 Majority. As used in these Bylaws, the term "majority" shall mean those Owners' votes, totaling more than fifty percent (50%) of the total number of such eligible votes. Unless otherwise specifically stated, the words "majority vote" shall mean more than fifty percent (50%) of the eligible Owners' votes cast in person or by proxy. Unless otherwise provided in the Declaration or these Bylaws, all decisions shall be by majority vote.

2.5 Purpose. The Association is organized and shall be operated primarily for the purpose of (i) holding legal title to the Common Areas for the use and benefit of the members of the Association, (ii) providing maintenance, improvement and beautification of Common Areas of The Gates at Vinings, (iii) establishing the means and methods of collecting the contributions to the Common Expenses, (iv) to undertake such other activities as are related to maintaining The Gates at Vinings as a desirable development for the members of the Association, (v) taking such other action as may be permitted under the Declaration or related to the activities set forth in (i) - (iv) above, and (vi) for such related purposes as may be permitted under applicable law and the Declaration.

2.6 Nonprofit Organization. As a nonprofit corporation organized pursuant to the provisions of the Georgia Nonprofit Corporation Code, the Association shall have no capital stock and no shareholders, and no part of the net earnings, income or profit of the Association shall inure to the benefit of or be distributable to its Directors, Officers, members or other private individual except that the Association may pay reasonable compensation for services rendered and may make payments and distributions in furtherance of its purposes.

ARTICLE 3 Association Meetings

3.1 Annual Meetings. The regular annual meeting of the Association shall be held during the third quarter of the Association's fiscal year at a time and place set by the Board.

3.2 Special Meetings. Special meetings of the Association may be called for any purpose, at any time, by the President, Secretary or Treasurer (i) if requested by two or more members of the Board or (ii) if requested by written petition from a majority of the Owners, provided a meeting agenda and explanation of issues for the meeting is submitted to the President by the petitioning Owners.

3.3 Notice of Meetings. Written notice of the place, date, and time of every annual or regularly scheduled meeting of the Association shall be mailed to each Owner at least twenty-one (21) days before such meeting. Written notice of the place, date, and time of any other meeting of the Association shall be mailed to each Owner at least seven (7) days before such meeting. Each Owner shall register their address with the Association, and notices of meetings shall be mailed to them at such address, and if no such address has been registered, at the last-known address of the Owner. For a special meeting, such notice shall state the purposes or objects of the meeting. It shall not be necessary that notice of an annual meeting specify the business to be transacted at such meeting, but such notice shall specify the number of Directors to be elected at such annual meeting.

3.4 Waiver of Notice. Waiver of notice of meeting of the Association shall be deemed the equivalent of proper notice. Any Owner may waive notice in writing of any meeting, either before or after such meeting. Attendance at a meeting by an, whether in person or by proxy, shall be deemed waiver by such Owner of notice of the time, date and place thereof, unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such special meeting unless objection to lack of notice of the special meeting, of which proper notice was not given, is made.

3.5 Quorum. The presence, in person or by proxy, of Owners entitled to cast at least fifty percent (50%) of the votes entitled to be cast at the meeting shall constitute a quorum at all meetings of the Association. The Owners present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Owners to leave less than a quorum.

3.6 Adjournment. Any meeting of the Association may be adjourned from time to time for periods not exceeding forty-eight (48) hours by vote of the Owners holding the majority of the eligible votes represented at such meeting, regardless of whether a quorum is present. Any business which could be transacted properly at the original session of the meeting may be transacted at an adjourned session, and additional notice of such adjourned session to all Owners shall be provided to allow for full participation.

3.7 Proxy. Any Owner entitled to vote may do so by written proxy duly executed by the Owner, setting forth the meeting at which the proxy is valid. To be valid, a proxy must be dated and filed with the Secretary prior to the opening of the meeting for which it is to be used. No proxy shall be revocable, except by written notice delivered to an Officer. A proxy shall be automatically revoked if the member who has given such proxy is in attendance at a meeting.

3.8 Consents. Any action which may be taken by a vote of the Owners may also be taken by written consent signed by a majority of all Owners.

3.9 Conduct of Business. *Roberts Rules of Order* (latest edition) shall govern conduct of all Association meetings, when not in conflict with the Declaration, Articles of Incorporation, these Bylaws, resolution of the Board of Directors, or direction of the President.

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

ARTICLE 4 Board of Directors

A. Composition and Selection.

4.1 Composition. The affairs of the Association shall be governed by a Board of Directors, which shall be not less than three (3), but not more than five (5), persons. Each member of the Board shall be an Owner. Only one Owner of a Lot may serve on the Board at a time, i.e., no co-Owners of a single Lot may serve on the Board at the same time.

4.2 Election and Term of Office. Except as otherwise provided in this Article 4, Directors shall be elected by an affirmative vote of a majority of the votes cast, whether in person or by proxy, at the annual meeting. Each Director, except in the case of death, resignation, retirement, disqualification or removal, shall serve until the next succeeding annual meeting and thereafter until a successor shall have been elected.

4.3 Removal of Members of the Board of Directors. At any regular or special meeting of the Association duly called, any one or more of the members of the Board may be removed, with or without cause, by a majority of the Owners, and a successor may then and there be elected to fill the vacancy thus created. Additionally, any member of the Board (i) who has three (3) consecutive absences from meetings of the Board without having given prior notice to any other member of the Board or (ii) who is delinquent in the payment of any assessments or other amounts due and payable under the Declaration, the Bylaws or any Rules and Regulations, past any applicable notice and cure periods, may be removed by a majority vote of the members of the Board at a meeting of the Board with a quorum being present at such meeting.

4.4 Vacancies. Vacancies in the Board caused by any reason shall be filled by vote of a majority of the Owners.

4.5 Compensation. Directors shall not be compensated for their work with the Association.

B. Meetings.

4.6 Organizational Meeting. The first meeting of a newly elected Board shall be held within thirty (30) days of election at such time and place as may be determined by the Directors.

4.7 Regular Meetings. Meetings of the Board shall be held regularly at such time and place as shall be determined from time to time by the Board.

4.8 Special Meetings. Special meetings of the Board may be called by the President on two (2) days' notice given by mail, in person, or by telephone to each Director, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President, Secretary or Treasurer in like manner and on like notice on the written request of at least two (2) Directors.

4.9 Waiver of Notice. Any Director may, at any time, in writing, waive notice of any meeting of the Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall also constitute a waiver of notice of the time and place of such meeting. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at the meeting.

4.10 Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. *Roberts Rules of Order* (latest edition) shall govern the conduct of the meetings of the Board when not in conflict with the Declaration, these Bylaws, Resolutions of the Board, or direction of the President. A majority of Directors shall constitute a quorum for the transaction of business. A decision of the Board shall be by a majority of those directors present at a duly called meeting.

4.11 Action of Board Without a Meeting. Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if a majority of the members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

4.12 Action of Owners Without a Meeting. Any action requiring the vote of the Owners may be taken without a meeting if a majority of the Owners shall consent in writing by ballot to

such action provided (i) all Owners are advised of the action in writing or by a meeting to discuss such action, (ii) not less than two members of the Board count and validate the signed ballots and stipulate the count for the minutes of the Association and (iii) Owners are advised in writing of the outcome of the vote. Any such ballots must include (a) the action to be consented to, (b) the number of votes required for approval as dictated by the Declaration or the Bylaws, as applicable, (c) a specific date upon which such ballot must be returned to the Board and (d) to which member of the Board the ballot must be returned.

C. Powers and Duties.

4.13 Powers and Duties. The Board shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the affairs of THE GATES AT VININGS and may do all such acts and things, unless the Declaration, Articles of Incorporation or these Bylaws direct that such acts and things be done and exercised by the Owners.

4.14 Management Agent. The Board and Officers shall have the authority to delegate to persons or entities of their choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association, acting through its Board or Officers, may employ any person or entity to manage its affairs or any part thereof, as well as such other personnel as the Association shall deem necessary or desirable, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be common expenses of the Association.

4.15 Committees. The Architectural Control Committee was established under the Declaration. The Board may establish such other committees as it deems necessary, appropriate or desirable.

4.16 Requirements of Contracts Entered into by the Association. The Board, acting on behalf of the Association, shall have the right to contract with or engage any person or company to perform various duties and functions related to managing the Common Areas and the business of the Association, including without limitation, managing agents, accountants and attorneys. {Any such contracts or engagements shall be for a period of not more than one (1) year and shall be subject to termination by either party, without cause and without penalty, upon not less than thirty (30), nor more than ninety (90), days written notice by the terminating party to the other party. The Board may solicit bids for the services to be provided by such contracts and final contract approval shall require the consent and approval of not less than two (2) members of the Board.

4.17 Enforcement. The Board shall have absolute power and authority on behalf of the Association (i) to enforce the Declaration, the Bylaws and any Rules and Regulations currently in effect, and (ii) to exercise all rights and remedies provided for in the Declaration, the Bylaws, such Rules and Regulations, at law or in equity.

ARTICLE 5
Officers

5.1 Designation. The principal Officers of the Association shall be the President, Secretary and Treasurer, all of whom shall be elected by the Board. The Board may appoint a Vice President, an Assistant Treasurer, an Assistant Secretary, and such other subordinate officers as in its judgment may be necessary.

5.2 Election of Officers. The Officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the Association and shall hold office at the pleasure of the Board and until a successor is elected.

5.3 Removal of Officers. Upon the affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and a successor may be elected.

5.4 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all the general powers and duties which are incident to the office of the President of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the power to appoint committees from among the members from time to time as the President may decide is appropriate to assist in the conduct of the affairs of the Association.

5.5 Vice President. The Vice President, if any, shall act in the President's absence and shall have all powers, duties and responsibilities provided for the President when so acting.

5.6 Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board and shall have charge of such books and papers as the Board may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with Georgia law.

5.7 Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board. The Treasurer shall cause the budget to be prepared as provided below.

5.8 Agreements, Contracts, Deeds, Leases, Checks, And Other 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 individual or individuals as may be designated by resolution of the Board.

ARTICLE 6
Association Responsibilities

6.1 Liability and Indemnification of Officers and Directors. To the fullest extent permitted by the Georgia Non-profit Corporation Code, the Association shall indemnify and hold harmless every Officer and Director against any and all claims, loss, costs and expenses, including counsel fees, reasonably incurred by or imposed upon such Officer or Director in connection with any action, suit or other proceeding (including settlement of any such action, suit or proceeding, if approved by the then Board) to which (s)he may be made a party by reason of being or having been an Officer or Director, whether or not such person is an Officer or Director at the time such expenses are incurred. Excepting only the indemnity obligations of the Association set forth in this Section 6.1, neither the Association, or any Director, Officer, agent or employee thereof shall be liable to any Owner or to any other Person for any loss, damage or injury, or claim thereof, arising out of or in any way connected with the performance or nonperformance of the Association's duties under the Declaration or these Bylaws unless due to the willful misconduct, gross negligence or bad faith of the Association, or the Directors, Officers, agents or employees, as the case may be. The Officers and Directors shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association (except to the extent that such Officers or Directors may also be members of the Association), and the Association shall indemnify and forever hold each such Officer or Director free and harmless against any and all liability, and claims of liability, to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Officer or Director, or former officer or director, may be entitled. The Association shall, as a common expense, maintain adequate general liability and, if obtainable, officers and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in Section 6.2 hereof.

6.2 Insurance.

6.2.1 The Association shall obtain and maintain at all times, as a common expense, insurance as required herein, including:

(a) a "master" or "blanket" casualty insurance policy equal to full replacement value (i.e., one hundred percent (100%) of current "replacement cost," exclusive of land, foundation, excavation, and other items normally excluded from coverage) of the insurable improvements which can be insured for a reasonable premium on the Common Areas against loss or damage by fire or other hazards, including extended coverage (including all building service equipment and the like and any fixtures or equipment within the Common Areas) with an Agreement Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement. The master policy covering physical property damage shall provide, if commercially available, that the policy may not be canceled or substantially modified without at least thirty (30) days prior notice in writing to the Board;

(b) a fidelity insurance policy against dishonest acts on the part of the Directors and Officers responsible for handling funds belonging to or administered by the Association in an amount deemed reasonable by the Board; and,

(c) a comprehensive policy of public liability insurance in amounts established by the Board from time to time, but in no event shall such amounts be less than \$500,000.00 for injury, including death, to a single person, \$1,000,000.00 for injury or injuries, including death, arising out of a single occurrence, and \$50,000.00 for property damage.

6.2.2 All such insurance coverage shall be written in the name of the Association, the Directors and each of the Owners. The Board or managing agent, if any, shall, at least annually, conduct an insurance review to determine if the policies in force are adequate to meet the needs of the Association. The property and fidelity policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policies in determining whether the insurance equals at least the full replacement costs.

6.2.3 The Board shall utilize reasonable efforts to secure a master policy covering physical property damage that will provide the following:

(a) that the insurer waives its rights of subrogation of any claims against the Directors, Officers, the managing agent and the individual Owners;

(b) that the policy cannot be canceled, invalidated or suspended on account of the conduct of any Director, Officer or employee of the Association or the managing agent without a prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured;

(c) that any “no other insurance” clause contained in the policy shall expressly exclude individual Owners’ policies from its operation;

(d) that coverage will not be prejudiced by (1) any act or neglect of any Owner or Owner when such act or neglect is not within the control of the Association; or (2) any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control;

(e) that despite any provisions giving the carrier the right to elect to restore damage in lieu of cash, such option shall not be exercisable without the prior written approval of the Association.

6.2.4 All policies of insurance shall be written with a company licensed to do business in the State of Georgia and holding a rating of XI or better in the Financial Category as established by A. M. Best Company, Inc., if available.

6.2.5 In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by Owners.

6.2.6 In addition to the insurance required above, the Board may obtain, in its discretion and as a common expense, such other insurance as the Board may determine to be necessary.

ARTICLE 7 Assessments

7.1 Purpose. The assessments levied by the Association shall be used exclusively as provided for in the Declaration.

7.2 Declaration; Creation of Lien. The Declaration governs all other matters relating to assessments, including, without limitation, the liens of such assessments and remedies of the Association upon nonpayment by an Owner of such assessments.

ARTICLE 8 MISCELLANEOUS

8.1 Notices. All notices and other communications required by the Declaration or Bylaws shall be given in accordance with Article X, Section 6 of the Declaration. .

8.2 Severability. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws.

8.3 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of these Bylaws or the intent of any provision thereof.

8.4 Gender and Grammar. The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

8.5 Fiscal Year. The fiscal year shall be set by resolution of the Board. In the absence of a resolution by the Board, the fiscal year shall run from January 1 of each year through December 31 of that year.

8.6 Conflicts. In the event of conflicts between the Declaration and these Bylaws, the Declaration shall control.

8.7 Damage, Destruction or Condemnation. Damage to, destruction of or condemnation of all or any portion of the Common Areas shall be handled in the following manner:

8.7.1 If the insurance proceeds or condemnation award are sufficient to effect total restoration or replacement, then the Association shall cause the Common Areas to be so repaired, reconstructed and/or replaced substantially as they previously existed.

8.7.2 If the insurance proceeds or condemnation award are insufficient to effect total restoration, repair or replacement of the Common Areas, then the Board of Directors may (i) cause the Common Areas to be repaired, reconstructed or replaced in a way which utilizes all available insurance proceeds or condemnation awards to the extent of such proceeds or (ii) elect not to rebuild, repair or replace such Common Areas and thereupon shall raze or otherwise restore the Common Area thereon to a clean, good, safe and sightly condition.

8.7.3 In the event after any such repair, reconstruction or replacement there remains any unused insurance proceeds or condemnation awards, the Board shall apply such excess against and reduce the subsequent year's annual assessments under the Declaration.

8.8 Amendment. These Bylaws may be amended by the Board if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) enable any title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; (c) enable an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase Mortgage loans on the Lots subject to the Declaration; (d) enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to the Declaration; or (e) comply with the provisions of the Georgia Property Owners Association Act, O.C.G.A. § 44-3-220 *et seq.* In addition, these Bylaws may be amended upon the affirmative vote of at least two-thirds (2/3) of the eligible Owners.

8.9 Books and Records. All members of the Association and all holders of first mortgages shall, upon written request, be entitled to inspect all books and records of the Association and current copies of the Declaration, Bylaws, and other rules concerning THE GATES AT VININGS during normal business hours at the office of the Association or such other place designated reasonably by the Board as the depository of such books and records. At each annual meeting of the Association, the Board shall make available to all Owners (i) a balance sheet and statement of any Association bank accounts, (ii) an operating income and budget performance statement for the preceding twelve months, and (iii) statements of changes in financial position during the preceding twelve months.

8.10 Rights of Action. The Association and any aggrieved Owner shall have a right of action against any Owner for failure to comply with the Declaration, these Bylaws, or the rules and regulations of the Association or with decisions of the Association which are made pursuant thereto. Also, in the event that the Board shall fail to perform any duty or duties which, under

applicable law, the Declaration, the Articles of Incorporation or these Bylaws, are to be performed by it, any Owner who is aggrieved by such failure shall have the right to proceed in equity to compel the Board to perform such duty or duties. In no event, however, shall any member or members of the Board have any liability to any Owner for any failure by the Board to perform any such duty or duties. If any such Owner prevails in such proceeding, the Association shall pay to such Owner, as a common expense of the Association, such Owner's reasonable costs and expenses incurred in connection with such proceeding, including court costs and reasonable attorneys' fees.

8.11 Fining or Suspension Procedure. The Board shall not impose a fine (late charges or interest shall not constitute a fine) or suspension unless and until the following procedure has been followed; provided, however, that this procedure shall not be required for: (1) late charges or interest on delinquent assessments; (2) suspension of voting rights if an Owner is shown on the Association's records to be more than 30 days delinquent in any payment due the Association; and (3) suspension of the right to use the Common Property, in which case the late charge, interest and foregoing suspensions shall be automatic:

(a) Written notice shall be delivered to the Owner as provided in this Article 8, specifying:

- (1) the nature of the violation, the fine or suspension to be imposed and the date, not less than ten (10) days, or in the event of an unapproved sign, twenty-four (24) hours, from the date of the notice, that the fine or suspension will take effect;
- (2) that the Owner may, within ten (10) days from the date of the notice, request a hearing before the Board regarding the fine or suspension imposed;
- (3) the name, address and telephone number of a person to contact to request a hearing;
- (4) that any statements, evidence, and witnesses may be produced at the hearing; and
- (5) that all rights to have the fine or suspension reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(b) If a hearing is requested, it shall be held by the Board in executive session, and the Owner shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. Except for the display of unapproved signs, the fine or suspension shall run from the date that a decision is made by the Board at the conclusion of the hearing or such later date as the Board may determine.

8.12 Electronic Records, Signatures and Documents. To the extent permitted by Georgia law, the Declaration and these Bylaws, the Association and its Officers, Directors and members may perform any obligation or exercise any right by use of any technological means providing sufficient security, reliability, identification and verifiability, which technological means have been approved by the Board in its sole discretion.