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BK 7156 PG 201-205

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STATE OF GEORGIA/FORSYTH

After recording, please return to:

CROSS REFERENCE: Deed Book: 3537
Page: 629

R-1
Coulter & Sierra, LLC
2800 Century Parkway, Suite 275
Atlanta, Georgia 30345; Attn MMR

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR JAMES CREEK
AND TO THE
BYLAWS OF JAMES CREEK HOMEOWNERS ASSOCIATION, INC.**

WHEREAS, the Declaration of Protective Covenants, Conditions, Restrictions and Easements for James Creek was recorded on October 19, 2004, in Deed Book 3537, Page 629, *et seq.*, Forsyth County, Georgia Records ("Declaration"), as amended; and

WHEREAS, the Bylaws of James Creek Homeowners Association, Inc. ("Bylaws") are recorded as Exhibit "C" to the Declaration; and

WHEREAS, Article 13, Section 13.6 of the Declaration and Article 6, Section 6.4 of the Bylaws provide for amendment of the Declaration and Bylaws by the Board of Directors of the James Creek Homeowners Association, Inc. ("Association"), to bring James Creek under, and submit James Creek to, the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* ("POA"), without a vote of the Association membership; and

WHEREAS, the Board of Directors of the Association desires to amend the Declaration and Bylaws to submit and conform to the POA and has approved this Amendment; and

WHEREAS, the Declarant, as defined by the Declaration has also approved this amendment.

NOW, THEREFORE, the Declaration and Bylaws are hereby amended as follows:

THIS AMENDMENT SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220, ET SEQ.

CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING ASSESSMENTS/CHARGES DUE ON HOMES AT JAMES CREEK.

1.

Article 1, Section 1.9 of the Declaration is hereby amended by adding the following to the end thereof:

The Community constitutes a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie, 1982), as such act may be amended from time to time.

2.

Article 1 of the Declaration is hereby amended by adding the following Section 1.32 thereto:

1.32 Act. "Act" means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie 1982), as such act may be amended from time to time.

3.

Article 4, Section 4.2 of the Declaration is hereby amended by deleting that Section in its entirety and substituting the following therefor:

4.2 Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments provided for herein; and (iii) specific special assessments which may be assessed hereunder and in accordance with Section 44-3-225(a) of the Act, including but not limited to reasonable fines imposed in accordance with the terms of this Declaration or the Bylaws.

All such assessments, together with charges, interest, costs, and reasonable attorneys' fees actually incurred (including post-judgment attorneys' fees, costs and expenses), and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Unit and shall be a continuing lien upon the Unit and Unit Owner against which each assessment is made. Such amounts shall also be the personal obligation of the person or entity who was the Owner of such Unit at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. The Association, in the Board's discretion, may, but shall not be obligated to, record a notice of such lien in the Forsyth County,

Georgia records evidencing the lien created under the Act and this Declaration. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

The lien provided for herein shall have priority as provided in the Act.

4.

Article 4, Section 4.9 of the Declaration is hereby amended by deleting that Section in its entirety and substituting the following therefor:

4.9. Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default. If any assessment or other charge, or any part thereof, is not paid in full within 10 days of the due date, then: (1) the Board may accelerate any unpaid installments of the annual assessment or other assessments, if paid in installments; (2) a late charge equal to the greater of \$10.00 or 10% of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner; (3) interest at the rate of 10% per annum or such higher rate as may be permitted by the Act shall accrue from the due date; (4) the Board may suspend voting rights, Common Property use rights and Association-provided services to the Unit; (5) the Board may bring legal action against the Owner to collect all sums owed under this Declaration; and (6) the Board may take any other lawful action authorized under this Declaration, the Bylaws or Georgia law to collect all such amounts. The delinquent Owner shall be assessed and responsible for all reasonable attorneys' fees actually incurred by the Association in collecting any sums owed hereunder.

5.

Article 4, Section 4.10 of the Declaration is hereby amended by deleting that Section in its entirety and substituting the following therefor:

4.10. Date of Commencement of Assessments. Assessments shall commence on a Unit as provided by the Act.

6.

Article 13, Section 13.1 of the Declaration is hereby amended by adding the following to the end thereof:

The Association also shall have all enforcement powers authorized under the Act.

7.

Article 13, Section 13.4 of the Declaration is hereby amended by deleting that Section in its entirety and substituting the following therefor:

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

8.

Article 13, Section 13.6 of the Declaration is hereby amended by deleting the phrase "two-thirds of the Units" therefrom and substituting "two-thirds of the eligible Units" therefor.

9.

Article 2, Section 2.5 of the Bylaws is hereby amended by deleting the thirds sentence thereof in its entirety and substituting the following therefor:

Notices shall be mailed or delivered not less than 21 days before each annual membership meeting and at least seven days before each special membership meeting.

IN WITNESS WHEREOF, the undersigned officers of James Creek Homeowners Association, Inc., hereby certify that this Amendment to the Declaration and Bylaws was duly adopted by the Association's Board of Directors in accordance with Article 13, Section 13.6 of the Declaration and Article 6, Section 6.4 of the Bylaws.

This 21 day of September, 2014.

**JAMES CREEK HOMEOWNERS
ASSOCIATION, INC.**

Sworn to and subscribed to before
me this 21st day of September,
2014.

By: Josh Patel (Seal)
President

Attest: B. K. Brown (Seal)
Treasurer

My Patel
Witness
[Signature]
Notary Public
My Commission
[Notary Seal] expires March 9, 2015.

[Corporate Seal]



DECLARANT: JOHN THOMAS
PARTNERS, LLC

Sworn to and subscribed to before
me this 21st day of August,
2014.

[Signature]

Witness

[Signature]
Notary Public

[Notary Seal]

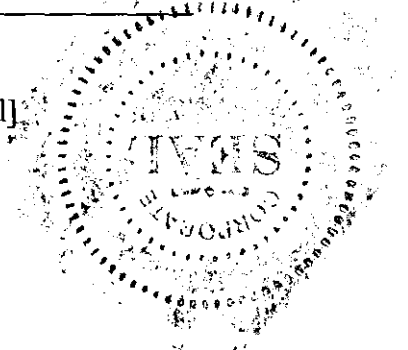


By: [Signature] (Seal)

Its: V.P.

Title

[Corporate Seal]



Upon recording return to:
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Forsyth, GA
Douglas Sorrells Clerk Superior Ct

BK **3537** PG **629-690**

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,

RESTRICTIONS AND EASEMENTS

FOR

JAMES CREEK

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

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS

FOR
JAMES CREEK

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS

FOR

JAMES CREEK

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR JAMES CREEK (hereinafter referred to as "Declaration") is made on the date hereinafter set forth by JAMES CREEK PARTNERS, LP, a Georgia limited partnership (hereinafter sometimes called "Declarant");

W I T N E S S E T H

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

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereof to the provisions of this Declaration to create a residential community of single-family housing and to provide for a general plan for the subdivision, development and improvement of James Creek in an orderly manner with appropriate architectural, landscaping, construction, development and maintenance controls to maintain the value, aesthetic appearance and architectural harmony of James Creek during and after development and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" attached hereto and by this reference incorporated herein is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, 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.

Article 1
Definitions

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

1.1 "Amenity Area" is the Common Property recreational amenity area serving the Community, which may include one or more swimming pools and related facilities, originally

constructed or installed by the Declarant as more particularly described on the recorded subdivision plat(s) for the Community.

1.2 "Approved Builder" means a home builder approved by Declarant for the construction of houses on Units which home builder has been granted rights of Approved Builder hereunder by the Declarant in a written instrument. Declarant may grant rights of Approved Builder to one or several home builders. Rights of Approved Builder hereunder shall apply only to the Units within a particular Neighborhood which are acquired by the Approved Builder.

1.3 "Approved Developer" means a developer approved by Declarant for the development of a portion of the Community, including, without limitation, a Neighborhood therein, which the developer has been granted rights of Approved Developer hereunder by the Declarant in a written instrument recorded in the Forsyth County land records. The Approved Developer shall have the right, but not the obligation, to exercise any and all rights of Declarant under this Declaration, the Articles and the Bylaws as set forth in such recorded written instrument. Declarant may grant rights of Approved Developer to one or several developers; provided, however, there shall be only one holder of the rights of Approved Developer hereunder as to a particular portion of the Community at any one point in time. Rights of Approved Developer hereunder shall apply only to the particular portion of the Community, including, without limitation, a Neighborhood therein, which is acquired by the Approved Developer.

1.4 "Articles of Incorporation" means the Articles of Incorporation of James Creek Homeowners Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.5 "Association" means James Creek Homeowners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

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

1.7 "Bylaws" means the Bylaws of James Creek Homeowners Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference as may be amended from time to time.

1.8 "Common Property" means any and all real and personal property, and the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners, including, without limitation, Limited Common Property as that term is herein defined.

1.9 "Community" refers to that certain real property described in Exhibit "A", attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein.

1.10 "Community-Wide Standard" means the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

1.11 "Declarant" means **JAMES CREEK PARTNERS, LP**, a Georgia limited partnership, and its successors-in-title and assigns; provided that in a recorded instrument, such successor-in-title or assignee is designated as the Declarant hereunder by the holder of all of the rights of Declarant hereunder; and, provided, further, upon the effective date of the designation of a successor Declarant, all rights of the former Declarant in and to such status as Declarant hereunder shall cease, it being understood that there shall be only one holder of the rights of Declarant hereunder at any one point in time.

1.12 "Easement and Use and Cost Sharing Agreement" means that certain Easement and Use and Cost Sharing Agreement, by and between James Creek Partners, LP, a Georgia limited partnership; James Creek Homeowners Association, Inc., a Georgia nonprofit corporation; and James Creek Tennis Academy, LLC, a Georgia limited liability company recorded contemporaneously herewith in the Forsyth County, Georgia land records, and which, in part, provides for certain easements for access, ingress and egress over and across that portion of the Amenity Area consisting of such roads, parking areas and walkways which serve the Tennis Property for access, egress and parking thereto in accordance with the terms thereof (the "Tennis Academy Easement Area") and provides for continued maintenance of the improvements and the easement areas so established and sets forth certain terms and conditions for the sharing of costs with respect to the Tennis Facility.

1.13 "Limited Common Property" means any portion of the Common Property reserved for the exclusive use and enjoyment or primary benefit of a limited number of Owners in the Community. Limited Common Property shall be initially designated as such and the exclusive use thereof shall be assigned in the deed by which the Limited Common Property is conveyed to the Association, in a Supplementary Declaration and/or on the subdivision plat relating to such Limited Common Property. By way of illustration and not limitation, open space in the Community which is reserved for the exclusive use of Owners of Townhome Units in a separately designated Neighborhood may be Limited Common Property. All costs associated with maintenance, repair, replacement and insurance of Limited Common Property shall be assessed against the Owners of Units to which the Limited Common Property is assigned, either as a Neighborhood Assessment or a Specific Assessment, as applicable.

1.14 "Lot" means any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes a single-family dwelling site, which dwellings will not be attached by one or more party walls to another dwelling, as shown on the plat(s) recorded in the Office of the Clerk of Superior Court of Forsyth County, Georgia. The ownership of each Lot shall include, and there shall automatically pass with the title to each Lot as an appurtenance thereto membership in the Association and all rights and interest of an Owner in the Common Property.

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

1.16 "Mortgagee" means the holder of a Mortgage.

1.17 "Neighborhood" means each separately developed and denominated area within the Community, whether or not governed by a Neighborhood Association (as defined below), in which the Owners of Units may have common interests other than those common to all members of the Association. Separate Neighborhood status shall be designated on Exhibit "A" hereof or in one or more Supplementary Declarations describing the property which shall constitute all or part of such Neighborhood. By way of illustration and not limitation, a townhouse development, cluster home development or single-family detached housing development might each be designated as a separate Neighborhood. Declarant, an Approved Developer with the consent of Declarant or an Approved Builder with the consent of Declarant shall have the right to designate separate Neighborhood status and change the Neighborhood status of any previously designated Neighborhood for any property in the Community. A Neighborhood may (but is not required to) have a separate incorporated mandatory membership Neighborhood Association.

1.18 "Neighborhood Assessment" means assessments levied on all Units in a Neighborhood to fund the estimated expenses expected to be incurred by the Association for the primary benefit of Units within such Neighborhood, as more particularly described in Section 4.4 hereof.

1.19 "Neighborhood Association" means any homeowners association or other mandatory membership owners association, if any, having concurrent jurisdiction with the Association over any Neighborhood.

1.20 "Neighborhood Declaration" means any declaration of protective covenants or similar instrument recorded in the Forsyth County, Georgia land records which subjects all or a portion of the land within such Neighborhood to covenants, restrictions, and easements in addition to those contained in this Declaration.

1.21 "Occupant" means any Person occupying all or any portion of a Unit or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.22 "Owner" means the record owner, whether one or more Persons, of the fee simple title to any Unit within the Community but does not include any Mortgagee.

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

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

1.25 "Tennis Academy" means JAMES CREEK TENNIS ACADEMY, LLC, a Georgia limited liability company, its successors and assigns.

1.26 "Tennis Facility" shall mean and refer to the tennis courts, clubhouse, tennis pro shop, restroom facilities and other related facilities, if any, located on or otherwise associated with the Tennis Property. At no time shall the Tennis Facility be a part of the Common Property nor is or shall the Tennis Facility be governed by the provisions of this Declaration. No Owner or Occupant nor the Association shall have any rights in and to or obligations with respect to the Tennis Facility except as expressly and specifically provided herein.

1.27 "Tennis Owner" shall mean and refer to the owner of the property on which the Tennis Facility is located, and its successors, assigns and successors-in-title with respect thereto.

1.28 "Tennis Property" shall mean and refer to that certain property on which the Tennis Facility is located, being more particularly described on Exhibit "D" attached hereto and incorporated herein by this reference, together with any additions thereto which may be made.

1.29 "Total Association Vote" means the votes attributable to the entire membership of the Association as of the record date for such action (including votes of the Declarant), whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. If, for example, and without limitation, a majority of the Total Association Vote is required to approve a matter, such matter must receive more than half of the votes attributable to all existing members of the Association as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. As a further illustration, if a majority vote is required to approve a matter (and the term Total Association Vote is not used), such matter must receive more than half of the votes cast by the members present and entitled to vote on the matter.

1.30 "Townhome Unit" shall mean any plot of land within the Community and a Neighborhood designated as a "Townhome Neighborhood," whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site for a townhome which will be attached by one or more party walls to another townhome. Where the dwelling on a Townhome Unit is attached by a party wall to one or more other dwellings, the boundary between Townhome Units shall be a line running along the center of the party wall separating the Townhome Units. The ownership of each Townhome Unit shall include, and there shall automatically pass with the title to each Townhome Unit as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interest of an Owner in the Common Property, as herein provided.

1.31 "Unit" shall mean a separate portion of the Community which may be independently owned and conveyed, including, without limitation a Lot or a Townhome Unit. Open space, entry features and similar property owned in fee simple by a Neighborhood Association shall cease to be a Unit upon conveyance to the Neighborhood Association.

Article 2 Property Subject To This Declaration

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

2.2 Unilateral Annexation By Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until twenty (20) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "B" attached hereto and by this reference incorporated herein, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Office of the Clerk of Superior Court of Forsyth County, Georgia a Supplementary Declaration describing the property being subjected. Declarant intends to annex hereto the property contained in Declarant's land plan for the development as amended from time to time which property is a portion of the property described in Exhibit "B". However, inclusion of property on Declarant's land plan or in Exhibit "B" shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land plan bar Declarant from subjecting such property to the Declaration. Any annexation shall be effective upon the filing for record of a Supplementary Declaration executed by the Declarant unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

2.3 Additional Covenants, Restrictions and Easements. Declarant may require the Owner of any portion of the Community to subject such property to additional covenants, conditions, restrictions and easements, including covenants obligating the Owners of Units within a designated Neighborhood to be mandatory members of a separately incorporated Neighborhood Association, in addition to the Association, to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by such Neighborhood Association through Neighborhood Assessments. Such additional covenants, conditions, restrictions and easements may be set forth in a Supplementary Declaration or a separate declaration of protective covenants or other document filed either concurrent with or

after the annexation of the subject property. Any such document filed by the Declarant may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property. No Person shall record any declaration of covenants, conditions and restrictions, easement, or similar instrument without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Forsyth County, Georgia land records. No such instrument recorded by any Person, other than the Declarant pursuant to this section, may conflict with the Declaration, Bylaws or Articles.

2.4 Other Annexation. Upon the written consent of: (a) the owner(s) thereof; (b) the Declarant; and (c) the Owners of at least two-thirds (2/3) of the Units, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Office of the Clerk of Superior Court of Forsyth County, Georgia a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

2.5 Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing any portion of the Community then owned by Declarant or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community.

Article 3 Association Membership and Voting Rights

3.1 Membership. Every Person who is the record owner of a fee or undivided fee interest in any Unit subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Mortgagees and the conveyance of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Unit. Membership shall be appurtenant to and may not be separated from ownership of a Unit. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the designee of a member, but in no event shall more than one office be held for each Unit owned. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this Section shall restrict the number of votes cast or the number of the officers and directors appointed by the Declarant.

3.2 Voting. Members shall be entitled to one vote for each Unit owned. When more than one Person holds an ownership interest in a Unit, the vote for such Unit shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or

referendum. The vote attributable to a Unit shall be suspended in the event more than one Person seeks to exercise it. The Board of Directors may suspend the voting rights of an Owner for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations.

3.3 Notice of Sale, Lease or Acquisition. Prior to the sale or lease of a Unit, the Owner shall provide the Association with written notice of the name of the purchaser or lessee, as the case may be, and such other information as the Board may reasonably require. Upon acquisition of a Unit each new Owner shall provide the Association with written notice of the name and mailing address of the Owner and such other information as the Board may reasonably require.

Article 4 Assessments

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

4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) Neighborhood assessments, if applicable; (c) Amenity Area assessments (d) special assessments; and (e) specific assessments. All such assessments, together with late charges, interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due) and costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and shall be a continuing lien in favor of the Association on the Unit against which each assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Unit at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Unit and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; 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 property. 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, then to late charges, then to interest and then to delinquent assessments.

4.3 General Assessments. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. The general assessment to be levied against each Unit shall be an equal amount for all Units. The Board shall cause the budget and the assessments to be levied for the year to be delivered to each member at least thirty (30) days prior to the due date of any general assessment. The budget and the general assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and the Declarant. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue. General assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the general assessment shall be paid in semi-annual installments at the beginning of each respective six-month period. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance, costs and expenses incurred by the Association pursuant to that certain Easement and Use and Cost Sharing Agreement, expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others.

4.4 Neighborhood Assessments. The Association may levy assessments against the property in a particular Neighborhood to fund actual and estimated expenses incurred by the Association for the primary benefit of property within such Neighborhood, including without limitation, maintenance required to be performed by the Association with respect to property within such Neighborhood. Neighborhood assessments shall be levied as specifically budgeted from time to time by the Board of Directors pursuant to this Declaration. In addition, the Board shall levy a Neighborhood assessment upon the request of the Owners holding two-thirds (2/3) of the Total Association Vote applicable to Units within a Neighborhood.

4.5 Amenity Area Assessments. The Association shall levy assessments against each Unit in order to fund actual and estimated expenses incurred by the Association for the primary benefit of the Amenity Area in the Community. It shall be the duty of the Board to prepare a budget covering the estimated costs of insuring, operating and maintaining the Amenity Area during the coming year. The Board shall include in the Amenity Area budget the costs for maintenance, repair and replacement of the roads, parking areas and walkways in the Community serving the Tennis Property located on the Tennis Academy Easement Area which costs are allocated to the Tennis Academy as provided herein. In addition, the Board shall include in the Amenity Area budget an estimate of the income to be collected by the Association during the coming year on behalf of a lot situated outside of the James Creek Community the owner(s) and/or occupant(s) of which enjoy use and access rights in and to the Amenity Area

pursuant to a grant of such rights in accordance with Article 11 of this Declaration ("Nonmember User Fee Income"), if any, which estimate shall be based on the Nonmember User Fee Income collected in the previous year or, in the event that no Nonmember User Fee Income was collected in the previous year, on such factors as the Board in its sole discretion shall determine are reasonably appropriate to calculate such an estimate; provided, however, in estimating Nonmember User Fee Income and determining the Amenity Area budget for the current year the Board shall account for any surplus or deficit with regard to the Amenity Area budget for the previous year. Both (i) the costs for maintenance of the roads, parking areas and walkways in the Community serving the Tennis Property which are located on the Tennis Academy Easement Area allocated to the Tennis Academy pursuant to the Easement and Use and Cost Sharing Agreement; and (ii) the amount of the estimated Nonmember User Fee Income for the coming year shall be subtracted from the total Amenity Area budget in order to determine the Amenity Area assessments to be levied against the Units. The Amenity Area assessment to be levied against each Unit shall be an equal amount for all Units. The Board shall cause the Amenity Area budget to be levied and the Amenity Area assessments to be levied against the Units for the year to be delivered to each Owner of a Unit at least thirty (30) days prior to the due date of any Amenity Area assessment. The Amenity Area budget and the Amenity Area assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and Declarant. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed Amenity Area budget or the Board fails for any reason to determine the Amenity Area budget for any period, then and until such time as an Amenity Area budget shall have been determined, as provided herein, the Amenity Area budget in effect shall continue. The Amenity Area assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors for general assessments, and may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Amenity Area assessments shall include any sums the Board determines necessary for the continued ownership, operation, maintenance, repair and replacement of the Amenity Area property and appurtenant facilities and personal property, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. Amenity Area assessments may include, without limitation, sums for property taxes, insurance premiums, management fees, charges for utilities, cleaning and janitor services, and landscape maintenance.

4.6 Special Assessments. The Association may levy a special assessment if approved by two-thirds (2/3) of the Total Association Vote and the Declarant. Special assessments shall be paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

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

be specifically assessed equitably among all of the Units which are benefited according to the benefit received; and (b) expenses of the Association which benefit all Units, but which do not provide an equal benefit to all Units, may be assessed equitably among all Units according to the benefit received.

4.8 Subordination of Liens to Mortgages. The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage if, but only if, all assessments and charges with respect to such Unit authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the property pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the property pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination and shall not relieve an Owner of the personal obligation to pay all assessments coming due during such period of ownership; shall not relieve such property from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such property to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of any personal obligation or relieve such property or the then Owner from liability for any assessment authorized hereunder become due after such sale and transfer.

4.9 Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. 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 and/or to foreclose its lien. The Association may file a notice of its claim of lien with the Office of the Clerk of Superior Court of Forsyth County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments contained in this Declaration. Each Owner, by acceptance of a deed, vests in the Association the right and power to bring all actions against such Owner personally for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on any property within the Community 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 the Common Property, including, without limitation, the Amenity Area, maintained by the Association 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 member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such property in favor of the Association.

4.10 Date of Commencement of Assessments. Assessments shall commence in general when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a particular Unit on the first to occur of: a) the date that the Unit is first occupied for residential purposes; b) the date that the Unit is conveyed to an Owner who is not an Approved Builder, an Approved Developer or a builder acquiring such Unit in the ordinary course of business or successor Declarant; c) one year from the date that the Unit is conveyed to an Approved Builder or a builder acquiring such Unit in the ordinary course of business. A Unit shall be occupied for residential purposes when it has been improved with a dwelling and has been conveyed to an Owner who intends to occupy and use the structure as a residence, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy. Any Unit which has been approved by Declarant for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant or any other Person, so long as such Unit is approved for use as a model home and is not occupied for residential purposes.

4.11 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the general, Neighborhood, special and specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Community. No Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

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

4.13 Estoppel Letter. The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, as established by the Board, certify to the amount of any unpaid assessments constituting a lien on a specified Unit. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Unit shall be binding upon the Association.

4.14 Initiation Fee. Upon conveyance of title to a Unit to the first Owner, other than the Declarant, an Approved Builder, an Approved Developer or a builder acquiring such Unit in the ordinary course of business or successor Declarant, an initiation fee in the amount of one-sixth (1/6) of the total general assessment for the Unit for such year shall be collected from the purchaser at the closing of such transaction and paid to the Association. The initiation fee shall constitute a specific assessment against the Unit, shall be in addition to, not in lieu of, the annual general assessment and shall not be considered an advance payment of such assessment. The initiation fee may be used by the Association for any purpose, including, without limitation, for the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions of this Declaration.

Article 5 Maintenance; Common Property

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Property, including the Limited Common Property, if any (if and to the extent such Limited Common Property is not maintained by a Neighborhood Association). The Association shall also maintain (whether or not constituting Common Property): (a) all Community entry features, including entry area landscaping and any irrigation system and the expenses for water and electricity, if any, provided to all such entry features; (b) all storm water detention/retention ponds and drainage facilities serving the Community, if and to the extent such facilities are not maintained by the owner of such facilities or a government body or Neighborhood Association; (c) all street medians and islands located in the Community, if and to the extent the same are not maintained on an ongoing basis by a government body or Neighborhood Association; (d) all Community greenbelt and open spaces; (e) all Community recreational facilities; (f) all property outside of Units located within the Community which was originally maintained by Declarant, if and to the extent the same is not maintained on an ongoing basis by a government body or Neighborhood Association; (g) all private Community and Neighborhood streets or alleys, if and to the extent the same are not maintained on an ongoing basis by a government body or Neighborhood Association; and (h) any pedestrian paths, tunnels or walking trails located in the Community, if and to the extent the same are not maintained on an ongoing basis by a government body or Neighborhood Association. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community and to enter into easements and covenant to share costs agreements regarding such property, where the Board has determined that such maintenance would benefit the Owners. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, shall be assessed against the Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Community-Wide Standard. Any common irrigation system installed by the Declarant or the Association shall be Common Property, operated, maintained, repaired and replaced by the Association. The deed of conveyance of any Unit shall not include any right, title or interest in such irrigation system, if any. The Association shall not be liable for injury or damage to Person or property: (x) caused by the elements of by an Owner or any other Person; (y) resulting from

rain or other surface water which may leak or flow from any portion of the Common Property; or (z) caused by any street, pipe, plumbing, drain, lake, dam, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair.

5.2 Owner's Responsibility. Except as otherwise provided in this Declaration, all maintenance of the Unit (except for maintenance performed on a Unit by the Association pursuant to Section 5.1 hereof or by a Neighborhood Association pursuant to a Neighborhood Declaration) and all structures, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Unit in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis, tree and shrub pruning, and watering landscaped areas; keeping improvements, and exterior lighting in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; and repairing and painting (or other appropriate external care) of improvements located on a Unit. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement and all costs thereof shall be assessed against the Owner and the Unit as a specific assessment.

5.3 Conveyance of Common Property by Declarant, an Approved Developer or an Approved Builder to Association; No Implied Rights. Declarant, an Approved Developer with the consent of Declarant or an Approved Builder with the consent of Declarant may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and, if and as provided in Section 5.1 hereof, maintained by the Association for the benefit of its members. So long as Declarant owns any property primarily for development and/or sale in the Community or Declarant has the right unilaterally to annex additional property to the Declaration, Declarant may, upon written notice to the Association, require the reconveyance by the Association to Declarant of any Common Property or any portion thereof, improved or unimproved, at no charge to Declarant, without a vote of the Owners/members of the Association, if the Common Property or portion thereof is: (i) found by Declarant to have been conveyed in error, (ii) needed by Declarant to make adjustments in property boundary lines, or (iii) reasonably determined by Declarant to be needed by Declarant

due to changes in the overall scheme of development for the Community. The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept/make on behalf of the Association any such conveyance and reconveyances and to execute on behalf of the Association any and all documents, including, without limitation, deeds and transfer tax declaration forms, necessary or convenient to effectuate and document any such conveyances and reconveyances, and all acts of such attorney-in-fact are hereby ratified. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise. The Declarant, an Approved Developer or an Approved Builder shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. The Declarant, an Approved Developer with the consent of Declarant or an Approved Builder with the consent of Declarant may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant, an Approved Developer or an Approved Builder may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the Office of the Clerk of Superior Court of Forsyth County, Georgia.

5.4 Partition. The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Units located within the Community.

5.5 Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within sixty (60) days after such taking, an alternative plan is approved by at least seventy-five percent (75%) of the Total Association Vote and the consent of the Declarant. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Property shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

5.6 Liability. Owners, Occupants and their guests shall use the Common Property, including, without limitation, the Community recreational facilities, green space, pedestrian paths and walking trails maintained by the Association, if any, at their own risk and shall assume sole responsibility for their personal belongings used or stored there. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on any of the foregoing property. The Association shall not be liable for injury or damage to any Person or property (a) caused by the elements or by an Owner or any other

Person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or Occupant for loss or damage, by theft or otherwise, of any property of such Owner or Occupant.

5.7 Changes in Boundaries. Declarant expressly reserves for itself and its successors and assigns the right to change and realign the boundaries of any Units owned by Declarant and, if Declarant is not the Tennis Owner, with the written consent of the Tennis Owner, the Tennis Property, including the realignment of boundaries between adjacent Units owned by Declarant.

5.8 Party Walls. Each wall or fence whether built as part of the original construction of a Unit or added pursuant to Article 6 hereof, if any, which shall serve and separate any two (2) adjoining Units shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall or fence may restore it, and the other Owner who is benefited by the wall or fence shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

Article 6 Architectural Standards

6.1 General. No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling, construction of impervious surface, building, exterior alteration of existing improvements, change in the exterior color of any existing improvement, and planting and removal of landscaping materials), shall be commenced or placed upon any part of the Community unless installed by the Declarant or an affiliate of the Declarant, approved in accordance with this Article, or otherwise expressly permitted under this Declaration. Any Owner may remodel, paint or redecorate the interior of structures on the Unit without approval hereunder. However, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. An Approved Developer or Approved Builder may submit its standard plans to Declarant for approval hereunder, which approval will not be unreasonably withheld, and thereafter no further approval shall be required under this Article for such Approved Builder to construct improvements on Units consistent with the approved standard plans. This Article shall not apply to the activities of the Declarant or Approved Developer or Approved Builder (except as provided above), their affiliates, nor to

improvements to the Common Property by or on behalf of the Association; provided, however, this Article shall apply to any otherwise unaffiliated builder under this Declaration. This Article may not be amended without the written consent of the Declarant until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Unit has been improved with a dwelling for which a certificate of occupancy has been issued.

6.2 Architectural Review Committee. Until Declarant's rights are terminated in accordance with Section 13.5 of this Declaration, the Architectural Review Committee ("ARC") of the Association shall consist of from one to three members as determined by Declarant from time to time. Thereafter, the ARC shall consist of three (3) members who shall be appointed as provided below. The Declarant may establish separate sub-committees of the ARC for each Neighborhood and delegate some or all of the right, power and authority of the ARC to a Neighborhood sub-committee. Separate Neighborhood sub-committees may, at the sole discretion of the Declarant, be established for new construction and for modifications to existing structures. Until Declarant's rights are terminated in accordance with Section 13.5 of this Declaration, the Declarant shall have the right to appoint all members of the ARC and subcommittees thereof.

Prior to the termination of the rights of Declarant hereunder, the ARC or any sub-committee thereof may in its sole discretion relinquish architectural control as to certain types of improvements or modifications to an advisory ARC while retaining control over all other building and construction in the Community. For example and without limitation, the ARC may relinquish control over modifications of existing structures to an advisory ARC for a particular Neighborhood while retaining all authority to review and approve new home construction. Any right, power or authority of the ARC which may be relinquished to the Association prior to the termination of the rights of Declarant hereunder shall be by written recorded instrument only and no such right, power or authority shall be relinquished by implication or otherwise. The establishment of an advisory ARC shall not be deemed to be a relinquishment by Declarant of any of its right, power and authority hereunder.

Upon the termination of all rights of Declarant hereunder, the Board of Directors shall appoint an ARC and all sub-committees thereof, which shall have all such jurisdiction over architectural control within the Community under this Article.

6.3 Guidelines and Procedures. Except as provided above, no exterior construction, addition or alteration shall be made unless and until plans and specifications shall have been submitted in writing to and approved in writing by the ARC. Such plans and specifications shall be of sufficient detail to allow the ARC to make its review and, to the extent required by the ARC, shall show the nature, kind, shape, height, materials and location of the proposed improvement. The ARC may adopt written design and development guidelines and application and review procedures, which may provide for a review fee. The ARC shall have sole and full authority to prepare and to amend, from time to time at its sole discretion and without notice, the architectural guidelines. Upon request, the ARC shall make the architectural guidelines available to Owners and builders who seek to engage in construction upon all or any portion of the Community and such Owners and builders shall conduct their operations strictly in accordance therewith. If the ARC fails to approve or to disapprove submitted plans and specifications within thirty (30) days after receipt of all required plans and specifications, such approval shall be

deemed to have been given; provided, however, in no event shall such approval be deemed to have been given unless submission of such plans and specifications conforms to and complies with such plans, specifications and procedures as may then be required by the ARC pursuant to this Article 6, including without limitation, payment of any review fee. As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration. In the discretion of the ARC, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The ARC shall be the sole arbiter of such plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. The ARC and its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such entry. If construction does not commence on a project for which plans have been approved within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the ARC for reconsideration.

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

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

6.6 Variances. Notwithstanding anything to the contrary contained herein, the ARC shall be authorized to grant individual variances from any of the provisions of this Declaration and the architectural guidelines if it determines that waiver of application or enforcement of the provision in a particular case is dictated by unique circumstances, such as, but not limited to,

topography, natural obstructions, hardship, aesthetic considerations or environmental considerations and would not be inconsistent with the overall scheme of development for the Community. No variance shall (a) be effective unless in writing, (b) be inconsistent with the overall scheme of development for the Community, or (c) prevent the ARC from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.7 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the ARC, an Owner shall, at its own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the ARC and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Unit as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the architectural guidelines may be excluded by the ARC from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws. In such event, neither the ARC, the Association or the officers, directors, members, employees and agents of any of them shall be held liable to any Person for exercising the rights granted by this paragraph. In addition to any other remedies available to the ARC, in the event of noncompliance with this Article, the ARC may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the ARC shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

Article 7 Use Restrictions and Rules

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

7.2 Residential Use. Each Unit shall be used for residential purposes exclusively. Leasing of a Unit for residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Unit, except that the Owner or Occupant in residence at the Unit may conduct business activities within the dwelling unit so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Unit; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain

insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Community, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity.

7.3 Leasing. Units may be leased for single-family residential purposes. Unless otherwise provided by the Board of Directors, all leases shall have a minimum term of at least six (6) months. All leases shall require, without limitation, that the Occupants acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions and rules and regulations of the Association and obligate the Occupants to comply with the foregoing.

7.4 Signs. No sign of any kind shall be erected within the Community without the prior written approval under Article 6 hereof. Notwithstanding the foregoing, the Board, Declarant and any Approved Developer or Approved Builder with the consent of Declarant shall have the right to erect reasonable and appropriate signs. For-sale signs and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Unit. The provisions of this Section shall not apply to any Mortgagee in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure. The Board may impose a fine of One-Hundred and Fifty and No/100 Dollars (\$150.00) per day for display of any sign in violation of this provision which is not removed within twenty-four hours after written demand is delivered to the Owner at that Unit.

7.5 Vehicles; Parking. Vehicles shall be parked only in appropriate parking areas serving the Unit or other areas as may be designated by the Board from time to time, if any. All parking shall be subject to such reasonable rules and regulations as the Board may adopt. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term "commercial vehicles" as used herein, shall include, without limitation, any vehicle which bears any indicia of commercial use, including, but not limited to, writing, logos, or which would not be primarily used for the transportation of passengers. The term "parking areas serving the Unit" shall refer to the number of garage parking spaces on a Unit and if and only if, the Occupants of a Unit have more vehicles than the number of garage parking spaces, those excess vehicles which are an Occupant's primary means of transportation on a regular basis may be parked on the driveway on the Unit. Carports shall not be permitted upon any portion of the Community. All homes shall contain a garage. Garages shall be used for parking of vehicles and shall not be used primarily for storage or other purposes. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than three (3) days if it is not licensed or if it is in a

condition such that it is incapable of being operated upon the public highways. After such three-day period, such vehicle may be removed from the Community by the Board of Directors. Any towed vehicle, boat, personal water craft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go-cart, golf cart, commercial truck, camper, bus or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage, for periods longer than twenty-four (24) hours may be removed from the Community by the Board of Directors (the intent of this provision is that the aforementioned vehicles may not be stored on a Unit except if kept in a garage and the temporary removal of such vehicle from a Unit to break the continuity of the 24 consecutive hours shall not be sufficient to establish compliance with this restriction). Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. Commercial vehicles shall not be permitted on any Common Property or any Unit, except if kept in an enclosed garage; provided construction, service, and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Property.

7.6 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Unit, with the exception of dogs, cats or other usual and common household pets in reasonable number as determined by the Board from time to time. All pets shall be registered, licensed and inoculated if and as required by law. No pets shall be kept, bred or maintained for any commercial purpose. No exterior pens for household pets shall be erected or maintained on any Unit unless approved in accordance with the provisions of Article 6 hereof. Dogs shall at all times when outside the Unit be kept on a leash or otherwise under control at all times. Animal control authorities shall be permitted to enter the Community to patrol and remove unlicensed pets. An Owner shall not allow any animal waste to remain on the Common Property maintained by the Association. The Association may require the removal of any animal that presents an actual threat to the health or safety of residents and require abatement of any nuisance or unreasonable source of annoyance.

7.7 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Unit. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, screaming, shouting, excessively loud talking, fighting, raucous behavior, insobriety, playing loud music or television, use of any alarm, equipment, or device, mechanical or otherwise which creates or produces excessively loud sounds or any vibrations, or any conduct which creates any noxious or offensive odors outside a home shall be permitted, located, used or placed on any Unit, or any

portion thereof. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board. This provision shall not apply to any Unit(s) owned by the Declarant.

7.8 Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

7.9 Antennas. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Unit, unless approved in accordance with the provisions of Article 6 hereof; provided, however, no such approval shall be necessary to install (1) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services, that are one meter or less in diameter; (2) antennas designed to receive video programming services via multi-point distribution services that are one meter or less in diameter or diagonal measurement; or (3) antennas that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the dwelling unless an acceptable quality signal cannot otherwise be obtained.

7.10 Tree Removal. No trees that are more than four inches in diameter at a point 12 inches above the ground and no ornamental or flowering trees, including, but not limited to, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter, shall be removed from a Unit without prior written approval pursuant to Article 6 hereof. Owners shall also comply with any local ordinance and zoning condition applicable to tree removal. In the event of a conflict between the provisions of this Section and any local ordinance or zoning condition, the more restrictive provision shall govern. This provision shall not apply to the removal of trees by the Declarant, the Association or any Approved Developer or Approved Builder with the consent of Declarant.

7.11 Drainage. Catch basins, retention ponds, detention ponds, drainage swales and drainage easement areas are for the purpose of controlling the natural flow of water only. No obstructions or debris shall be placed in these areas. Owners shall not obstruct or alter the drainage flow across or from their Unit after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article 6 hereof.

7.12 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or other planting or thing shall be placed or permitted to remain where, in the opinion of the Board, it would create an unsafe condition.

7.13 Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, air conditioning units, heat pumps, swimming pool pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except as provided herein. Trash, garbage, debris or other waste matter of any kind may not be burned within the Community, except by Declarant or any Approved Developer or Approved Builder with the consent of Declarant during the original construction of a residence on a Unit. The Association shall have the right, but not the obligation, to designate a private trash removal company for the entire Community or for a portion of the Community, including without limitation, any designated Neighborhood area. Notwithstanding the foregoing, the Association reserves the right, but is not under the obligation, to contract with a private trash removal company for the benefit of all Owners and Occupants within the Community or a portion thereof and include a fee for such service as part of a General Assessment pursuant to Section 4.3 hereof or as part of a Neighborhood Assessment pursuant to Section 4.4 hereof, as appropriate. While the removal of normal household trash will be covered by any such contract, additional charges may be incurred for the removal of used appliances or other large items. Any such additional charges incurred by the Association may be Specifically Assessed against the applicable Unit pursuant to Section 4.7. All Community trash removal and recycling shall be subject to such further rules and regulations as the Board may adopt, including without limitation, the designation of a particular trash pick-up day throughout the entire or a portion of the Community.

7.14 Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed except with the prior written approval in accordance with the provisions of Article 6 hereof. Declarant and any Approved Developer with consent of Declarant, however, hereby expressly reserves the right to subdivide and/or revise and re-record the subdivision plat of any Unit(s) with the consent of the Owner of the affected Unit(s) and to approve the revision and re-recording of any plat of any Unit(s) owned by any builder or developer, including, but not limited to, changing any Unit to Common Property or creating a public or private street over any Unit or property that was formerly a Unit, without the consent of any Person, other than the Owner(s) of such property.

7.15 Firearms. The use or discharge of firearms in the Community is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns and other guns of any type, regardless of size.

7.16 Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any part of the Common Property except as may be installed by the Association or upon any Unit without prior written approval in accordance with the provisions of Article 6 hereof. Guidelines detailing acceptable fence styles or specifications may be issued pursuant to Article 6, but in no event may a chain link or barbed wire fence be approved; provided, however, the Declarant, the Association and any Approved Developer or Approved Builder with the consent of Declarant may erect any type of fence on the Common Property or elsewhere within the Community as they may deem appropriate or as necessary to satisfy the

requirements of any law, regulation or governmental entity or for health and safety of Owners and Occupants.

7.17 Utility Lines. Except as may be permitted under and pursuant to Article 6 hereof, no overhead utility lines, including lines for cable television, shall be installed within the Community, except for temporary lines as required during construction and lines installed by or at the request of the Declarant.

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

7.19 Lighting. Exterior lighting on any Unit visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Unit; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; (e) front house illumination of model homes; or (f) other lighting approved under and pursuant to Article 6 hereof.

7.20 Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any Unit. No white rocks shall be permitted as groundcover for landscaping beds. Exterior sculpture, fountains, flags and similar items must be approved under and pursuant to Article 6 hereof. No awnings, shades or window boxes shall be attached to or otherwise placed on the exterior of any structure on a Unit without prior written approval in accordance with the provisions of Article 6 hereof.

7.21 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Declarant or the ARC as the case may be, in accordance with the provisions of Article 6 hereof.

7.22 Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Unit without prior written approval in accordance with the provisions of Article 6 hereof and in no event shall any above-ground swimming pool be permitted.

7.23 Gardens, Play Equipment and Pools. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals) or garden pool shall be erected on or maintained upon any Unit without the prior written approval in accordance with the provisions of Article 6 hereof and in no event shall any metal swing set be permitted.

7.24 Mailboxes. All mailboxes serving Units shall be approved in accordance with the provisions of Article 6 hereof. Identical replacement mailboxes may be installed without further approval; but no modification to or change in mailboxes may be made unless approved in accordance with the provisions of Article 6 hereof.

7.25 Clotheslines. No exterior clotheslines of any type shall be permitted upon any Unit.

7.26 Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant or an Approved Builder on any Unit, or any part of any easement area associated therewith, without prior approval in accordance with the provisions of Article 6 hereof.

7.27 Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades, or any other purpose. The side of all window treatments which can be seen at any time from the outside of any structure located on a Unit must be white or off-white.

7.28 Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Unit, and no trailer, camper, shack, tent, garage, barn or other structure may be used as a residence, either temporarily or permanently, without written approval in accordance with the provisions of Article 6 hereof. However, this Section shall not be construed to prevent Declarant, an Approved Developer or Approved Builder with the consent of Declarant and those engaged in development, construction, marketing, property management or sales in the Community from using sheds, trailers or other temporary structures for any of the foregoing purposes. In addition, nothing in this Declaration shall be construed to prevent Declarant, an Approved Developer with the consent of Declarant or an Approved Builder with the consent of Declarant from developing, constructing, marketing, or maintaining model homes or speculative housing within the Community.

7.29 Retaining Walls. No retaining wall or retaining wall type structure of any kind shall be placed, erected, allowed or maintained upon any Unit without prior written approval in accordance with the provisions of Article 6 hereof. In addition to any other requirements and guidelines set forth pursuant to Article 6 hereof, no retaining wall or retaining wall type structure of any kind may be approved unless constructed of masonry materials, including without limitation, modular block, brick, stone or stucco, but in no event may an exposed concrete wall be approved. Guidelines detailing acceptable retaining wall styles or specifications may be issued pursuant to Article 6, but in no event may a wood or cross-tie wall be approved; provided, however, the Declarant, any Approved Developer or Approved Builder with the consent of Declarant and the Association may erect any type of retaining wall structure on the Common Property or elsewhere within the Community as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for health and safety of Owners and Occupants.

7.30 Wetlands, Ponds and Streams. Except as herein provided, all ponds, wetlands, storm water retention or detention ponds and streams within the Community shall be used for aesthetic amenities and storm water drainage only, no other use thereof, including, without limitation, swimming, ice skating, playing, or use of personal flotation devices, and other recreation, shall be permitted, without the written consent of the Board of Directors. The Association and/or the Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the wetlands, ponds, or streams within the Community. For this purpose, "wetlands" means any area labeled as wetlands on a recorded plat for the Community or otherwise designated as wetlands by the Declarant or the Board of Directors. No Owner shall have any right to place rocks, stones, trash, garbage,

sewage, waste water, rubbish, debris, ashes or other refuse in any wetlands, ponds, storm water retention ponds or streams within the Community. Applicable governmental agencies, the Declarant and the Association, shall have the sole right to control the water level of all bodies of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any wetlands, ponds, storm water retention ponds and streams within the Community. Owners shall have no riparian or littoral rights with respect to the waters in any pond or stream within the Community and shall not be permitted to withdraw water from any pond or stream as may exist in the Community without the prior written consent of the Board of Directors.

7.31 Stream Buffers. Land-disturbing activities shall not be conducted on any Unit or Common Property within any stream buffer or any wetlands as the same are depicted on the recorded subdivision plat(s) for the Community, except with prior written approval under Article 6 hereof, and compliance with Georgia law, including without limitation, the Control of Erosion and Sedimentation Act, O.C.G.A. Section 12-7-1, *et seq.*, as amended from time to time.

7.32 Landscape Strips and Natural Buffer Areas. A Unit or Common Property may contain a natural or enhanced buffer area or landscape strip as shown on the applicable recorded subdivision plat(s) for the Community. The buffer area or landscape strip shall exist as an undisturbed buffer area of existing vegetation. After the initial construction by Declarant or an Approved Builder, Owners shall not disturb any buffer area or landscape strip in any way including, without limitation, the construction any improvements in the buffer area or landscape strip, or cutting of trees, bushes or other vegetation except with prior written approval under Article 6 hereof.

7.33 Pedestrian Paths. Except as may be otherwise provided herein, the pedestrian paths within the community shall be used as foot paths only. Bicycles, roller blades, skate boards, go-carts, minibikes, scooters or motorcycles, with or without electric motors, or similar wheeled means of transportation or recreation shall not be permitted on the paths in the Community. Provided, however, this provision shall not prohibit the use of a path by any person with a disability by the use of a wheelchair or other necessary transportation device, and further provided that the Board of Directors may adopt such rules as may be deemed appropriate concerning the use of the paths. This provision shall not apply to concrete sidewalks located along the public streets within the Community.

7.34 Outdoor Water Use. Outdoor water use for irrigation of landscaping within the Community is restricted to conform to Water Use Guidelines established by the Georgia Department of Natural Resources and to maintain minimum system-wide residual pressure in the Forsyth County Water System. Accordingly Owners shall irrigate only according to the mandated odd/even system established by the Board of Natural Resources Rules for Outdoor Water Use and then only during the hours of 12:00 midnight through 6:00 a.m. At the time of recording of this Declaration outdoor water use was allowed at odd-numbered addresses only on Tuesdays, Thursdays and Sundays and at even-numbered and unnumbered addresses only on Mondays, Wednesdays and Saturdays. All outdoor water use within the Community shall be in accordance with the Rules for Outdoor Water Use established by the Georgia Board of Natural Resources which are subject to change from time to time and shall control if more restrictive

than the provisions of this Declaration. In addition, irrigation flows on Lots in the Community shall be restricted as follows:

	Typ. Lot Size (Ft ²)	No. of Units	Allowable Irrigation Flow (gpm)
Pod B	10,500	82	12.5
Pod C	7,000	169	8.3
Pod D	6,000	130	7.0
Pod E	5,000	273	6.0
Pod F	Townhome Units	304	3.1

All outdoor water usage within the Community shall be subject to such further reasonable rules and regulations as the Board of Directors may adopt from time to time with the consent of Declarant and without a vote of the members. The Association shall have the right to inspect any irrigation system within the Community to confirm compliance with this Section and any additional rules and regulations applicable to outdoor water use that may be hereafter promulgated by the Board of Directors or any applicable governmental authority.

7.35 Outdoor Use of Pesticides and Fertilizers. Fertilizers used on the exterior portions of the Community shall be rated as “low” or “no” phosphorus fertilizer and shall be applied in quantities no greater than those recommended by the manufacturer. Outdoor use of pesticides and fertilizers within the Community may be further restricted and/or regulated to prevent and/or reduce the amount of nutrients and other nonpoint source pollution that could possibly and eventually flow into tributaries in the Community, and shall be subject to such further rules and regulations as the Board may adopt from time to time, including, without limitation, rules and regulations concerning recommended and/or prohibited fertilizers and pesticides.

Article 8 Insurance and Casualty Losses

8.1 Insurance on Common Property. The Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Community. Accordingly, the Board of Directors shall obtain casualty insurance for all insurable improvements, whether or not located on the Common Property, including without limitation, Limited Common Property, if any, and the Amenity Area which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy applicable to the Common Property, including without limitation, Limited Common Property, if any, and the Amenity Area covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars. Policies may

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

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

8.3 Damage and Destruction -- Insured by Association. Immediately after damage or destruction by fire or other casualty to any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, a proposal not to repair or reconstruct such property is approved by at least seventy-five percent (75%) of the Total Association Vote and the Declarant. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members of the Association, levy a special assessment against the Owner of each Unit. Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or

reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition.

8.4 Damage and Destruction -- Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Unit shall be repaired or reconstructed by the Owner thereof in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 6 of this Declaration. Said repair or reconstruction shall be completed within seventy-five (75) days after such damage or destruction occurred or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner of a Unit other than a Townhome Unit, may elect to demolish all improvements on the Unit and remove all debris and ruins therefrom within seventy-five (75) days after such damage occurred and thereafter maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay all costs which are not covered by insurance proceeds.

Article 9 Mortgagee Provisions

9.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number, therefore becoming an "eligible holder"), will be entitled to timely written notice of: (a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Unit of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

9.2 Audit. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements of the Association within ninety (90) days of the date of the request.

9.3 No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Article 10
Easements

10.1 General. Each Unit shall be subject to those easements, if any, shown or set forth on the recorded subdivision plats for the Community, as amended from time to time as well as the easements now or hereafter established by the Declarant in this Declaration or by any other document recorded in the Office of the Clerk of Superior Court for Forsyth County, Georgia.

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

(a) the right of the Association to charge reasonable admission and other fees for the use of any Community recreational facilities, including, without limitation, the Amenity Area, to limit the number of Persons who may use the Community recreational facilities, including, without limitation, the Amenity Area, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by authorized users and their guests and invitees;

(b) the right of the Association to suspend the right of an Owner to use any Community recreational facilities, including, without limitation, the Amenity Area, for any period during which any past due assessment against any Unit of the Owner remains unpaid, and for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations;

(c) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least two-thirds (2/3) of the Units (other than Declarant) and the consent of Declarant, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, any Owner, the Tennis Owner, the Tennis Academy or the holder of any Mortgage encumbering any Unit or other property located within the Community (Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Unit or other property located within the Community.);

(d) the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Property to government entities, any quasi-governmental agency or to any utility company or cable television company;

(e) the right of the Association to dedicate, transfer or convey all or any portion of the Common Property upon the approval of the Owners of at least two-thirds (2/3) of the Units (other than Declarant) and the Declarant;

(f) all other rights of the Association, the Declarant, Owners and Occupants set forth in this Declaration, in any Supplementary Declaration or in any deed conveying Common Property to the Association;

(g) the rights of certain Owners to the exclusive use, access and enjoyment of those portions of the Common Property designated as "Limited Common Property" as more particularly described herein;

(h) the rights of Persons, if any, holding rights to use the Amenity Area granted by Declarant or the Association pursuant to Article 11 hereof;

(i) the Easement and Use and Cost Sharing Agreement; and

(j) all encumbrances and other matters shown by the public records affecting title to the Common Property.

10.3 Easements for Utilities. There is hereby reserved to the Declarant and granted to the Association a blanket easement upon, across, above and under all property within the Community for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant, an Approved Developer with consent of Declarant or the Association might decide to have installed to serve the Community. Declarant, an Approved Developer with consent of Declarant, the Association or the designee of any of them, as the case may be, may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board shall have the right to grant such easement.

10.4 Easement for Emergency Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules, which right may be exercised by any member of the Board, the officers, agents, employees, and managers of the Association and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a

reasonable time after requested by the Association, but shall not authorize entry into any single family dwelling without permission of the Owner.

10.5 Easement for Maintenance. Declarant hereby grant to the Association a perpetual easement across the exterior portions of all Units as may be reasonably necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Units, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractor(s) at their sole expense.

10.6 Easement for Entry Features and Streetscapes. There is hereby reserved to the Declarant and granted to the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Community or a designated Neighborhood, over and upon any portion of a Unit containing such entry features or streetscapes, if any, as may be more fully described on the recorded subdivision plats for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around entry features and streetscapes and the right to grade the land under and around the same.

10.7 Easement for Drainage. There is hereby reserved to the Declarant and granted to the Association and any Approved Developer or Approved Builder with the consent of Declarant a blanket easement across all Units for creating and maintaining satisfactory storm water drainage in the Community; provided, however, such easement area shall not include any portion of a Unit within the outer perimeter of the dwelling structure. This easement shall include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. It is anticipated that increased storm water run off across downstream Units will result from the construction of impervious surface within or adjacent to the Community. Neither the Declarant, any Approved Developer, the Association or any builder or Owner constructing according to plans and specifications approved under Article 6 hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction within the Community.

10.8 Easements for Tennis Property. For so long as Declarant owns a Unit, Declarant hereby reserves the right, but is under no obligation, to grant for the benefit of the Tennis Owner, its successors, assigns and successors-in-title with respect to the Tennis Property, the transferable, alienable and perpetual right and easement for the installation, maintenance, repair, replacement and use within the Common Property and those portions of Units encumbered pursuant to Section 10.3 hereof of utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers and electrical, gas, telephone, and water and sanitary sewer lines.

10.9 Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, architectural guidelines, and amendments thereto, Declarant reserves an easement across the Community for Declarant and any Approved Developer or Approved Builder with the consent of Declarant to maintain and carry on, upon such portion of

the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's and such Approved Developer's or Approved Builder's, as the case may be, development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or for the development, construction or benefit of any neighboring property, including, but not limited to: the right to place or authorize the placement of marketing and directional signs on Units or right-of-way at street intersections within the Community; the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Unit; the right to tie into any portion of the Community with streets, driveways, paths, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to grant easements over, under, in or on the Community, including without limitation the Units, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to convert Units (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant and any Approved Developer or Approved Builder with the consent of Declarant may use residences, offices or other buildings owned or leased by Declarant or such Approved Developer or Approved Builder as model residences and sales offices and may also use Community recreational facilities as a sales office without charge. This Section shall not be amended without the Declarant's written consent until the Declarant's rights hereunder have terminated as herein provided.

Article 11 Use of Amenity Area by Nonmembers

11.1 Rights Reserved by Declarant. So long as the Declarant owns any property for development and/or sale in the Community or has the right to annex additional property to the Community, Declarant shall have the right to grant to Persons who are not members of the Association the right to use the Community recreational facilities. The extent and duration of nonmember use and the fee to be charged therefor shall be determined solely by Declarant. The Declarant may grant nonmember use rights to Persons on a nonrenewable annual basis or as an easement appurtenant to such Persons' residential real property so that such use rights shall automatically inure to the benefit of both the original grantees and their respective successors-in-title to such real property. Nonmember user fees shall be paid to the Association. Unless otherwise established by the Board of Directors, all fees shall be paid in one annual installment. The amount of such annual payment may be increased each year by the Board so long as the annual fee does not exceed the annual Amenity Area assessment levied against members of the Association. Any use rights granted to nonmembers may not be terminated by the Association so long as the terms and conditions imposed upon nonmember use by Declarant are complied with by the nonmember user.

11.2 Right and Easement of Use. Declarant hereby expressly reserves unto itself, its successors and assigns a non-exclusive, perpetual right, privilege and easement with respect to the Community for the benefit of Declarant, its successors, assigns and the above discussed nonmember users, over, under, in and/or on the Community (including, without limitation, the above described recreational facilities), without obligation and without further charge to the foregoing, for the purposes of taking all actions related to or connected with the granting of nonmember use and the use of Community recreational facilities by such nonmembers as described above. Such right, privilege and easement shall include, without limitation, the right of access, ingress, use and egress to and from the above described recreational facilities and the right of access, ingress to, use and egress from for vehicular and pedestrian traffic over, under, on and across the Community roads, parking areas and walkways.

11.3 Remedy of Association Upon Failure to Pay User Fees. Declarant shall not be liable for and is hereby held harmless from any failure of any nonmember to pay a nonmember user fee to the Association where required to do so by this Section. In such case, in addition to any remedy available in this Declaration or under Georgia law, the Association may suspend the use right of the nonmember who has not timely paid until all amounts owed are paid. Declarant shall also not be liable for and is hereby held harmless from any personal injury or property damage caused by nonmembers, their family, guests and invitees, exercising any rights hereunder. The provisions of this Section shall apply notwithstanding any contrary provisions in this Declaration, the Bylaws, Articles of Incorporation, rules and regulations, use restrictions and any amendments to any of the foregoing.

11.4 Right of Association to Grant Nonmember Use Rights. After the Declarant's option to grant nonmember use rights as set forth above terminates, the Association, acting by and through the Board of Directors, without a vote of the members shall be entitled to exercise the same rights reserved to the Declarant in this Article.

11.5 Capacity of Facilities. The rights granted under this Article for use of the Community recreational facilities shall be subject to any applicable limitations on bathing load for any swimming pool that may be a part of such facilities and other limitations on capacity of any of such facilities as may be established by any applicable government law, ordinance, rule or regulation.

Article 12 Tennis Facility Provisions

12.1 Tennis Facility. A Tennis Facility is being constructed adjacent to the Community. The Tennis Facility is a private club, separate and distinct from the Association, and governed by its own rules, regulations and requirements. The Tennis Facility and the Tennis Property are not (and is not expected in the future to be) part of the Common Property, and neither the Association nor any Owner shall have any right, easement or privilege in and to the Tennis Facility or the amenities contained therein, including the right to enter upon or use the Tennis Facility facilities, except under such conditions and requirements as may be established by the Tennis Owner or the Tennis Academy from time to time, as the case may be. All other terms

and conditions of membership status and the rights, privileges and obligations appurtenant thereto shall be determined by the Tennis Owner or the Tennis Academy, as the case may be.

12.2 Ownership and Operation of Tennis Facility. No representations or warranties have been or are made by the Declarant with regard to the continuing existence, ownership or operation of the Tennis Facility and the facilities therein. Further, the ownership and/or operation of the Tennis Facility is separate and distinct from Declarant and may change at any time and from time to time, without the consent of the Declarant, the Association or any Owner.

12.3 Subdivision Plats. The Tennis Owner or the Tennis Academy shall have the right to record, modify, amend, revise and add to, at any time and from time to time, subdivision plats setting forth such information as the Tennis Owner or the Tennis Academy may deem necessary with regard to the Tennis Property, including, without limitation, the location of the tennis courts and related facilities and their relationship to the Community.

12.4 Notice to Owners Within the Community. NO OWNER OF PROPERTY OR A LOT WITHIN THE COMMUNITY SHALL HAVE ANY RIGHTS IN OR TO THE AMENITIES LOCATED ON THE TENNIS PROPERTY, OR ANY RECREATIONAL ACTIVITIES OCCURRING THEREON, INCLUDING, BUT NOT LIMITED TO, A VISUAL OR SIGHT EASEMENT OVER AND ACROSS ANY PORTION OF THE TENNIS PROPERTY, RIGHTS OF MEMBERSHIP IN OR TO THE TENNIS FACILITY, OR RIGHT OF ACCESS TO OR ACROSS THE TENNIS PROPERTY, UNLESS SUCH RIGHT OR RIGHTS HAVE BEEN GRANTED OR CONVEYED IN THE EASEMENT AND USE AND COST SHARING AGREEMENT OR OTHERWISE IN WRITING BY THE TENNIS OWNER OR THE TENNIS ACADEMY OR THEIR RESPECTIVE SUCCESSORS AND ASSIGNS. THE TENNIS OWNER OR THE TENNIS ACADEMY SHALL HAVE NO OBLIGATION TO PROVIDE, OR TO CONTINUE THE OPERATION OF, ANY IMPROVEMENTS ON THE TENNIS PROPERTY, INCLUDING, BUT NOT LIMITED TO, A TENNIS FACILITY. RIGHTS TO USE THE RECREATIONAL FACILITIES LOCATED ON THE TENNIS PROPERTY SHALL BE ON SUCH TERMS AND CONDITIONS AS MAY BE PROMULGATED, FROM TIME TO TIME BY THE TENNIS CLUB OWNER. ADDITIONALLY, THE TENNIS OWNER OR THE TENNIS ACADEMY AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AS THE CASE MAY BE, HAVE THE RIGHT, WITHOUT NOTICE OR WARNINGS, TO PLANT, REMOVE, OR TRIM TREES OR BUSHES ON THE PROPERTY AS THAT OWNER OR ACADEMY, SUCCESSOR AND ASSIGN DEEMS ADVISABLE, IN ITS SOLE AND ABSOLUTE DISCRETION.

Article 13 General Provisions

13.1 Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plats for the Community and in the deed to such Owner's Unit, if any. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments. Failure to comply with this

Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association, the Declarant or an aggrieved Owner. Failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or design guidelines and to assess the cost of recording and removing such notice against the Unit of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

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

13.3 Self-Help. In addition to any other remedies provided for herein, the Association, the Declarant, the ARC or their respective duly authorized agents shall have the power to enter upon any Unit or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Owner shall be given ten (10) days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required herein or by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.

13.4 Duration. The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, if and to the extent that, Georgia law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision(s) shall be (a) automatically extended for successive periods of twenty (20) years (or the maximum period allowed by applicable law, if less), unless a written instrument signed by the then Owners of at least two-thirds (2/3) of the Units has been recorded within the year immediately preceding the beginning of a twenty (20) year renewal period agreeing to terminate the same; or (b) extended, renewed, modified or terminated as otherwise provided herein or by applicable law.

13.5 Termination of Rights of Declarant, Approved Developer and Approved Builder. The rights of Declarant, Approved Developer and/or Approved Builder to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant,

Approved Developer or Approved Builder, as the case may be, no longer owns any property in the Community and, in the case of Declarant, Declarant no longer has the right to unilaterally annex additional property to the Community as provided herein and a certificate of occupancy has been issued for a dwelling on each Unit in the Community; or (b) the date of recording by Declarant, Approved Developer or Approved Builder in the real estate records of the county where the Community is located of a written instrument terminating all of Declarant's, Approved Developer's or Approved Builder's rights hereunder.

13.6 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Units subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company, including, without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Units subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner of such Unit consents thereto in writing. Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder nor shall it adversely affect title to any Unit without the consent of the affected Owner. The Board of Directors, with the written consent of the Declarant, and without a vote of the members may amend this Declaration for the sole purpose of electing to be governed by the provisions of the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. In addition to the above, this Declaration may be amended upon the affirmative vote or written consent of the Owners of at least two-thirds (2/3) of the Units and the consent of Declarant. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given.

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

13.8 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of

this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and, to this end, the provisions of this Declaration are declared to be severable.

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

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

13.11 Preparer. This Declaration was prepared by Michael E. Leavey and David N. Dorough, Jr., Dorough & Dorough, LLC, Attorneys at Law, Two Decatur TownCenter, Suite 520, 125 Clairemont Avenue, Decatur, Georgia 30030.

13.12 Notices. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Unit and to the Declarant or the Association at the address of their respective registered agent on file with the Secretary of State of the State of Georgia. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by private courier service. The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or the date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

13.13 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

13.14 Indemnification. To the fullest extent allowed by the Georgia Nonprofit Corporation Code, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorney's fees, imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be

liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

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

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

13.17 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote and the consent of the Declarant. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided herein, (c) proceedings involving challenges to ad valorem taxation, (d) counterclaims brought by the Association in proceedings instituted against it, or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for goods or services to which the Association is a party. This Section shall not be amended unless such amendment is made unilaterally by the Declarant as provided herein or is approved by the percentage votes necessary to institute proceedings as provided above.

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

13.19 Security. The Declarant or the Association may, from time to time, take steps to provide some measure of security on the Common Property of the Community; however, NEITHER THE DECLARANT NOR THE ASSOCIATION IS A PROVIDER OF SECURITY AND SHALL HAVE NO DUTY TO PROVIDE ANY SECURITY ON THE COMMON PROPERTY OF THE COMMUNITY OR OTHERWISE. THE OBLIGATION TO PROVIDE SECURITY LIES SOLELY WITH EACH UNIT OWNER INDIVIDUALLY. NEITHER

DECLARANT, THE ASSOCIATION NOR ANY OWNER GUARANTEES OR ASSURES TO ANY OTHER OWNER OR TO ANY OTHER PARTY WHOMSOEVER THAT ANY SECURITY MEASURES INSTALLED BY THE DECLARANT OR THE ASSOCIATION WILL IN ANY MANNER WHATSOEVER PROVIDE PERSONAL PROTECTION OR SECURITY TO ANY OWNER OR OCCUPANT, THEIR PERSONAL POSSESSIONS OR TO GUESTS OR INVITEES, OR TO ANY OTHER PERSON, AND EACH OWNER, BY THE ACCEPTANCE OF ITS DEED, SHALL HAVE ASSUMED THE ENTIRE RISK AS BETWEEN SUCH OWNER AND DECLARANT OR THE ASSOCIATION FOR ANY LOSS OR DAMAGE TO PERSON OR PROPERTY WITHIN THE COMMUNITY ARISING FROM ANY DEFICIENCY, FAILURE OR DEFECT IN ANY SECURITY MEASURES OR OTHERWISE.

13.20 Notice of Sale, Lease or Acquisition. Prior to the sale or lease of a Unit, the Owner shall provide the Association with written notice of the name of the purchaser or lessee, as the case may be, and such other information as the Board may reasonably require. Upon acquisition of a Unit each new Owner shall provide the Association with written notice of the name and mailing address of the Owner and such other information as the Board may reasonably require.

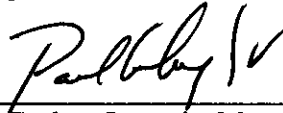
13.21 Cumulative Effect; Conflict. The covenants, restrictions and provisions of this Declaration shall be cumulative with those of any Neighborhood Declaration and the Association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such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

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Declarant herein hereby executes this instrument under seal, this 14 day of October, 2004.

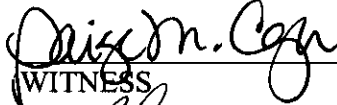
DECLARANT: **JAMES CREEK PARTNERS, LP**, a
Georgia limited partnership

By: **JAMES CREEK MANAGERS, LLC**, a
Georgia limited liability company, as its sole
general partner,

By:  (SEAL)
Paul E. Corley, Jr., as its Manager

By:  (SEAL)
Todd A. Hager, as its Manager

Signed, sealed, and delivered
in the presence of:


WITNESS


NOTARY PUBLIC

My Commission Expires: March 5, 2005

[AFFIX NOTARY SEAL]

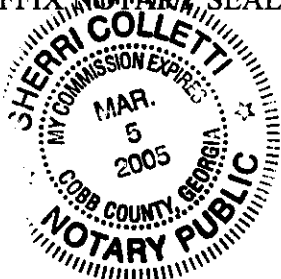


EXHIBIT "A"
Property Description
James Creek ~ Amenity Area

All of that tract or parcel of land lying and being in Land Lots 728 and 729 of the 2nd District, 1st Section of Forsyth County, Georgia and being more particularly described as follows:

TO REACH THE POINT OF BEGINNING COMMENCE at the northwest corner of Land Lot 712 (said corner being common to Land Lots 657, 658, 711 and 712) and proceeding thence South 01°00'16" West along the westerly line of Land Lot 712 for a distance of 710.17 feet to a point on the northerly right-of-way of Trammel Road (60' right-of-way); thence South 00°51'42" West along the westerly line of Land Lot 712 for a distance of 73.97 feet to a point on the southerly right-of-way of Trammel Road (60' right-of-way); thence in a southeasterly direction along the southerly right-of-way of Trammel Road (60' right-of-way) the following courses and distances: (1) 324.24 feet along the arc of a curve to the left, said curve having a radius of 1178.10 feet and being subtended by a chord of South 63°28'54" East, 323.21 feet; (2) 103.45 feet along the arc of a curve to the left, said curve having a radius of 698.99 feet and being subtended by a chord of South 75°36'22" East, 103.35 feet; (3) South 79°50'45" East, 2.87 feet; (4) 279.54 feet along the arc of a curve to the right, said curve having a radius of 1950.00 feet and being subtended by a chord of South 75°44'20" East, 279.30 feet; (5) South 71°37'56" East, 89.90 feet; (6) 234.54 feet along the arc of a curve to the right, said curve having a radius of 2000.00 feet and being subtended by a chord of South 68°16'21" East, 234.41 feet to a point; thence in a southeasterly direction along the southerly proposed right-of-way of the Proposed Relocation of Trammel Road (proposed variable right-of-way) the following courses and distances: (1) South 64°54'47" East, 94.99 feet; (2) 204.43 feet along the arc of a curve to the right, said curve having a radius of 1861.00 feet and being subtended by a chord of South 61°45'58" East, 204.33 feet; (3) South 58°37'09" East, 267.78 feet TO THE POINT OF BEGINNING: FROM THE POINT OF BEGINNING THUS ESTABLISHED proceed thence in a southeasterly direction along the southerly proposed right-of-way of the Proposed Relocation of Trammel Road (proposed variable right-of-way) the following courses and distances: (1) South 58°37'09" East, a distance of 176.42 feet; (2) 146.72 feet along the arc of a curve to the right, said curve having a radius of 647.80 feet and being subtended by a chord of South 52°07'51" East, 146.40 feet; (3) South 01°55'03" East, 42.31 feet to a point formed by the intersection of the southerly proposed right-of-way of the Proposed Relocation of Trammel Road (proposed variable right-of-way) and the northwesterly proposed right-of-way of the Proposed Windemere Parkway Extension (proposed 140' right-of-way); thence in a southwesterly direction along the northwesterly proposed right-of-way of the Proposed Windemere Parkway Extension (proposed 140' right-of-way) the following courses and distances: (1) 170.01 feet along the arc of a curve to the left, said curve having a radius of 3890.00 feet and being subtended by a chord of South 41°45'24" West, 170.00 feet; (2) South 40°30'17" West, 456.78 feet; thence departing the northwesterly proposed right-of-way of the Proposed Windemere Parkway Extension (proposed 140' right-of-way) and proceeding North 30°30'00" West for a distance of 96.52 feet to a point; thence North 40°30'17" East for a distance of 129.49 feet to a point; thence 193.78 feet along the arc of a curve to the left, said curve having a radius of 173.94 feet and being subtended by a chord of North 08°35'10" East, 183.92 feet to a point; thence 240.16 feet along the arc of a curve to the right, said curve having a radius of 251.50 feet and being subtended by a chord of North 04°01'30" East, 231.14 feet to a point; thence North 31°22'51" East for a distance of 121.95 feet TO THE POINT OF BEGINNING. Said tract containing 3.04352 acres or 132,575 square feet.

EXHIBIT "B"

Additional Property Which May Unilaterally
Be Submitted To This Declaration by Declarant

All that tract or parcel of land lying and being in Land Lots 642, 655, 712, 713, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 783, 784, 785, 786, 801 and 802 of the 2nd District, 1st Section, Forsyth County, Georgia.

EXHIBIT "C"

BYLAWS

OF

JAMES CREEK HOMEOWNERS ASSOCIATION, INC.

Prepared By:
David N. Dorough, Jr.
Dorough & Dorough, LLC
Attorneys at Law
Two Decatur TownCenter, Suite 520
125 Clairemont Avenue
Decatur, Georgia 30030
(404) 687-9977

BYLAWS
OF
JAMES CREEK HOMEOWNERS ASSOCIATION, INC.

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BYLAWS
OF
JAMES CREEK HOMEOWNERS ASSOCIATION, INC.

Article 1
Name, Membership, Applicability and Definitions

1.1 Name. The name of the corporation shall be James Creek Homeowners Association, Inc. (hereinafter sometimes referred to as the "Association").

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

1.3 Definitions. The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

Article 2
Association: Meetings, Quorum, Voting, Proxies

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

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

2.3 Special Meetings. The President or the Board of Directors may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association upon the delivery of a petition signed and dated by members entitled to cast at least twenty-five percent (25%) of the Total Association Vote and describing the purpose or purposes for which it is to be held. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose(s) thereof. No business shall be transacted at a special meeting, except those matters that are within the purpose or purposes described in the notice.

2.4 Record Date. The Board of Directors shall fix in advance a record date for a determination of members entitled to notice of and to vote at any meeting of members or any adjournment thereof, or to make a determination of members for any other purpose, such date to

be not more than seventy (70) days before the date on which the particular action requiring such determination of members is to be taken.

2.5 Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Unit of each member (as shown in the records of the Association as of the record date) a notice of each annual or special meeting of the Association stating the date, time and place where it is to be held and if and to the extent required by the Georgia Nonprofit Corporation Code (O.C.G.A. Section 14-3-101, et seq.) or other applicable law (the "Governing Law"), the purpose(s) thereof. If an Owner wishes notice to be given at an address other than the Unit, the Owner shall designate by notice in writing to the Secretary such other address. Notices shall be mailed or delivered not less than ten (10) days (or if notice is mailed by other than first-class or registered mail, thirty (30) days) nor more than sixty (60) days before the meeting. If any meeting of the members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If, however, a new record date is or must be fixed under the Governing Law notice of the adjourned meeting shall be given to persons who are members of record as of the new record date.

2.6 Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, signed by the member, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of lack of notice or defective notice, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

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

2.8 Membership List. After the record date for any meeting is established by the Board of Directors, the Secretary shall prepare an alphabetical list of the names and addresses of all of the members who are entitled to notice of the meeting. Beginning at least two (2) business days after notice is given of the meeting for which the list was prepared, the list of members shall be available for inspection by any member or a member's agent or attorney at the Association's principal office or at such other reasonable place as may be specified in the notice. In addition, the list shall be available for inspection at the meeting or any adjournment thereof.

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

2.10 Proxies. At all meetings of members, each member may vote in person or by proxy. All proxy appointment forms shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall

automatically cease upon: (a) receipt of notice by the Secretary of the death or judicially declared incompetence of a member; (b) receipt by the Secretary of written revocation signed by the member; (c) receipt by the Secretary of a subsequent appointment form signed by the member; (d) attendance by the member and voting in person at any meeting; or (e) the expiration of eleven (11) months from the date of the proxy appointment form.

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

2.12 Action Without A Formal Meeting. Any action required or permitted to be approved by the members may be approved without a meeting if one (1) or more consents, in writing, setting forth the action so taken, shall be signed and dated by members (including the Declarant, if the consent of the Declarant is required) holding the voting power required to pass such action at a meeting held on the record date for such action. The record date for such action shall be the date that the first member signs a consent. Such action shall be approved when the Secretary receives a sufficient number of such consents dated within seventy (70) days of the record date for such action. If less than unanimous consent is obtained, the approval shall be effective ten (10) days after the Secretary gives written notice of the approval to all members who did not sign a consent. Each signed consent shall be included in the minutes of meetings of members filed in the permanent records of the Association.

2.13 Action By Written Ballot. Any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each member 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 by written ballot of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

Article 3

Board of Directors: Number, Powers, Meetings

3.1 Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors. Directors shall be natural persons who are eighteen (18) years of age or older. Except for directors appointed by the Declarant, each director must reside in the

Community and be a member or the spouse of a member; provided, however, no Person may serve on the Board at the same time with such Person's spouse or any co-Owner or Occupant of such Person's Unit.

3.2 Directors Appointed by Declarant. The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (a) the expiration of twenty (20) years after the date of the recording of the Declaration; (b) the date on which all of the Units planned by Declarant to be a part of the Community shall have been improved with a dwelling and conveyed to an Owner for occupancy as a residence; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. The directors appointed by the Declarant need not be Owners or residents in the Community. The total number of lots planned by Declarant for the Community shall initially be the number of Units shown on the Declarant's land use plan for the development as it may be amended from time to time. Inclusion of property on the land use plan shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land use plan bar Declarant from subjecting such property to the Declaration. The final total number of Units planned for the Community shall be the actually number of Units shown on the recorded subdivision plat(s) for the Community regardless of any different number of Units shown from time to time on the land use plan.

3.3 Number of Directors. During the period that the Declarant has the right to appoint and remove the officers and directors of the Association as provided above, the Board of Directors shall consist of from one to three members as determined by Declarant in writing from time to time. Thereafter, the Board shall consist of not less than three members, who shall be elected as provided below, with at least one (1) member from each Neighborhood, who shall be elected as provided below. The number of members of the Board shall be increased if necessary by resolution of the Board so that there is always an odd number of members.

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

3.5 Election and Term of Office. After the Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting (or take action under Section 2.12 or Section 2.13 in lieu of a meeting) and the members shall elect directors. Each Neighborhood shall elect at least one (1) director, with the remaining directors to be elected at large. The members of the Board of Directors shall hold office for one (1) year and shall continue in office until their respective successors shall have been elected and take office. At annual meetings of the membership thereafter (or pursuant to Section 2.12 or Section 2.13 in lieu of a meeting), directors shall be elected. The candidates receiving the most votes shall be elected.

3.6 Removal of Directors. At any annual, regular or special meeting of the Association, any one (1) or more of the members of the Board of Directors elected by the members may be removed, with or without cause, by a majority of the Total Association Vote and a successor may

then and there be elected to fill the vacancy thus created. The notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is removal of a director. A director whose removal by the members has been proposed shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the remaining directors.

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

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

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

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

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

3.12 Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes

of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors.

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

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

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

3.16 Action Without A Formal Meeting. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Association for inclusion in the minutes for filing in the corporate records.

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

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

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

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

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

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

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

(f) making and amending rules and regulations;

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

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the members concerning the Association;

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

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

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

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

3.20 Borrowing. The Board of Directors shall have the power to borrow money without the approval of the members of the Association; provided, however, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the total amount of such borrowing exceeds or would exceed ten percent (10%) of the annual budget of the Association.

3.21 Fining Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(a) Written notice shall be delivered to the member by first-class or certified mail sent to the address of the member shown on the Association's records, specifying:

(1) the nature of the violation, the fine to be imposed and the date, not less than twenty-four (24) hours for an unapproved sign and not less than fifteen (15) days for other violations from the date of the notice, that the fine will take effect;

(2) that the violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine imposed;

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

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

(5) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(b) If a hearing is requested, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. Except for the display of unapproved signs, the fine 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.

Article 4 Officers

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

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

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

4.4 Salaries. The officers shall receive no compensation.

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

4.6 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and directors. The immediate supervision of the

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

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

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

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

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

Article 5 Committees

Advisory committees to perform such tasks and to serve for such periods as may be designated by the Board or as provided in the Declaration are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the Declaration or resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. An advisory committee shall not be authorized to exercise any authority of

the Board under the Articles of Incorporation, the Declaration, these Bylaws or the Georgia Nonprofit Corporation Code.

Article 6
Miscellaneous

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

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

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

6.4 Amendment. These Bylaws may be amended by the Board of Directors with the consent of the Declarant 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 Units 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 Units subject to the Declaration; (d) enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Units 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 Total Association Vote and the consent of Declarant.

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EXHIBIT "D"

Description of Property James Creek ~ Tennis Property

All of that tract or parcel of land lying and being in Land Lots 712, 713, 728 and 729 of the 2nd District, 1st Section of Forsyth County, Georgia and being more particularly described as follows:

TO REACH THE POINT OF BEGINNING COMMENCE at the northwest corner of Land Lot 712 (said corner being common to Land Lots 657, 658, 711 and 712) and proceeding thence South 01°00'16" West along the westerly line of Land Lot 712 for a distance of 710.17 feet to a point on the northerly right-of-way of Trammel Road (60' right-of-way); thence South 00°51'42" West along the westerly line of Land Lot 712 for a distance of 73.97 feet to a point on the southerly right-of-way of Trammel Road (60' right-of-way); thence in a southeasterly direction along the southerly right-of-way of Trammel Road (60' right-of-way) the following courses and distances: (1) 324.24 feet along the arc of a curve to the left, said curve having a radius of 1178.10 feet and being subtended by a chord of South 63°28'54" East, 323.21 feet; (2) 103.45 feet along the arc of a curve to the left, said curve having a radius of 698.99 feet and being subtended by a chord of South 75°36'22" East, 103.35 feet; (3) South 79°50'45" East, 2.87 feet; (4) 279.54 feet along the arc of a curve to the right, said curve having a radius of 1950.00 feet and being subtended by a chord of South 75°44'20" East, 279.30 feet; (5) South 71°37'56" East, 89.90 feet; (6) 234.54 feet along the arc of a curve to the right, said curve having a radius of 2000.00 feet and being subtended by a chord of South 68°16'21" East, 234.41 feet TO THE POINT OF BEGINNING: FROM THE POINT OF BEGINNING THUS ESTABLISHED proceed thence in a southeasterly direction along the southerly proposed right-of-way of the Proposed Relocation of Trammel Road (proposed variable right-of-way) the following courses and distances: (1) South 64°54'47" East, 94.99 feet; (2) 204.43 feet along the arc of a curve to the right, said curve having a radius of 1861.00 feet and being subtended by a chord of South 61°45'58" East, 204.33 feet; (3) South 58°37'09" East, 267.78 feet to a point; thence departing the southerly proposed right-of-way of the Proposed Relocation of Trammel Road (proposed variable right-of-way) and proceeding South 31°22'51" West, a distance of 121.95 feet to a point; thence 240.16 feet along the arc of a curve to the left, said curve having a radius of 251.50 feet and being subtended by a chord of South 04°01'30" West, 231.14 feet to a point; thence 193.78 feet along the arc of a curve to the right, said curve having a radius of 173.94 feet and being subtended by a chord of South 08°35'10" West, 183.92 feet to a point; thence South 40°30'17" West for a distance of 129.49 feet to a point; thence North 30°30'00" West for a distance of 65.91 feet to a point; thence North 57°56'19" West for a distance of 66.27 feet to a point; thence North 30°30'00" West for a distance of 615.19 feet to a point; thence North 20°05'03" East for a distance of 286.77 feet TO THE POINT OF BEGINNING. Said tract containing 6.46659 acres or 281,685 square feet.