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Cross-reference to:
Deed Book 56284, Page 508
Gwinnett County, Georgia Records

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
BERKLEY TOWNSHIP**



Prepared by:
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IMPORTANT NOTICE:

THIS DECLARATION 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 BOTH ASSESSMENTS/CHARGES DUE ON UNITS AND ANY UNCURED ARCHITECTURAL VIOLATIONS OR UNAUTHORIZED IMPROVEMENTS ON UNITS.

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR BERKLEY TOWNSHIP is made on the date hereinafter set forth by BERKLEY TOWNSHIP, LLC (hereinafter referred to as the "Declarant").

WITNESSETH:

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 the subjecting of other real property to the provisions of this Declaration; and

WHEREAS, Declarant has caused the Berkley Township Property Owners' Association (as hereinafter defined) to be formed as a Georgia non-profit corporation to perform certain functions for the common good and general welfare of the Owners (as hereafter defined);

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to this Declaration of Covenants, Conditions, Restrictions and Easements, which is for the purpose of enhancing and protecting the desirability and attractiveness of the Property. The Declarant and the Consenting Owner further declare that this Declaration shall run with the title to the Property, and be binding on all parties having any right, title or interest in the Property or any portion of the Property, and shall, subject to all limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns, and to the benefit of the Association.

ARTICLE I
DEFINITIONS

The following words, when used in this Declaration of Covenants, Conditions, Restrictions and Easements, shall have the following meanings:

1.01 **Act.** "Act" means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie 1982), as amended. The property described herein is hereby submitted to the Act.

1.02 **Additional Property.** "Additional Property" means the additional property which may be added to the Property and made subject to this Declaration pursuant to Article X hereof together with such other additional property and all improvements thereon as Declarant shall acquire from time to time and by amendment to Exhibit "B." A description of the Additional Property as of the date hereof is set forth on Exhibit "B" attached hereto and made a part hereof.

1.03 **Association.** "Association" means Berkley Township Property Owners' Association, Inc. (a non-profit corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

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

1.05 Builder. "Builder" shall mean any person/entity engaged in the business of construction for sale to homeowners of single family residential dwellings to whom the Declarant has sold or may sell one or more Units for the purpose of constructing single family residential dwellings.

1.06 Bylaws. "Bylaws" means the Bylaws of the Association.

1.07 Common Property. "Common Property" means all personal and real property, including without limitation, easements and other interests therein together with any improvements now or hereafter located thereon now or hereafter owned by the Association, as defined herein, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.08 Community-Wide Standard. "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 Declarant and may be articulated in the Design Standards herein.

1.09 Declarant. "Declarant" means Berkley Township, LLC, a Georgia limited liability company, its successors and assigns. The terms shall also be applied to any person which lawfully acquires the rights, privileges and options of Declarant in accordance with this Article I, Section 1.09. Any transfer of Declarant's rights must be in a written instrument expressly assigning all of Declarant's rights, privileges and options. Such a transfer may be included as a recital in any deed which conveys any portion of the Property.

1.10 Declaration. "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements for the Berkley Township Subdivision.

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

1.12 Mortgage. "Mortgage" means any and all instruments used for the purpose of encumbering 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.

1.13 Mortgagee. "Mortgagee" means the holder of a Mortgage.

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

1.15 Owner. "Owner" means the record owner (including Declarant) whether one or more persons or entities, of a fee simple title to any Unit, excluding any person holding such interest merely as security for the performance or satisfaction of an obligation, provided, however, that where fee simple title has been transferred and is being held merely as security for repayment

of a loan, the person or entity who would own the Unit in fee simple if such loan were paid in full shall be considered the Owner.

1.16 Person. "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.

1.17 Plat. "Plat" means that certain plat of the Community recorded in the plat books in Gwinnett County records, Georgia and shall be deemed to include any re-recorded or future plats of the Community.

1.18 Property. "Property" means that certain real property described on Exhibit "A" together with such additional real property as the Declarant may acquire and subject to the provisions of this Declaration.

1.19 Total Association Vote. "Total Association Vote" means the votes attributable to the entire membership of the Association (including votes of Declarant) as of the record date for such action, but specifically excluding the votes of any Owners whose voting rights have been suspended as provided herein, 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, two-thirds (2/3) of the Total Association Vote is required to approve a matter, such matter must receive a number of votes equal to or more than two-thirds (2/3) of the votes attributable to all existing members of the Association as of the record date for such action (and excluding the votes of any Owners whose voting rights have been suspended as provided herein), whether or not such members are present or represented at the meeting, if any, where such votes are to be cast.

1.20 Unit. "Unit" shall mean any Unit of land within the Community, whether or not improvements are constructed thereon, which constitutes a single residential dwelling site, as shown on the subdivision plat(s) for the Community, recorded in the land records of Gwinnett County, Georgia. The residential dwelling located on each Unit may be attached by one or more party wall(s) to one or more residential dwellings located on adjacent Units so that the boundary between such Units and the residential dwellings located thereon is a line running along the center of the party wall separating said residential dwellings. The ownership of each Unit shall include, and there shall pass with the title to each Unit as an appurtenance thereto, whether or not separately described, all of the rights and interests of an Owner in and to the Common Property, together with membership in the Association, all as further provided herein.

ARTICLE II COMMON PROPERTY

2.01 Conveyance of Common Property.

(a) The Declarant may from time to time cause to be conveyed to the Association certain real property (which may include Units or portions thereof) or grants of easements, as well as personal property, for the common use and enjoyment of the Owners (such real

and personal property being hereinafter collectively referred to as "Common Property"). In addition, the Declarant may from time to time cause the conveyance of certain real property or grants of easements to the general public as may be required by governing authorities in accordance with this Declaration.

(b) It is contemplated by the Declarant that the Declarant may convey to the Association Common Property for scenic and natural area preservation and for general recreational use. It is further contemplated that Declarant will grant easements to the Association for maintenance of those portions of Common Property designated as detention areas. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association.

(c) So long as Declarant has the right to appoint and remove members of the Board, 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 on behalf of the Association any conveyance to the Association 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 conveyance to the Association. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise.

(d) Notwithstanding any legal presumption to the contrary, the fee simple title to, and all rights in, any portion of the Property owned by the Declarant designated as Common Property on the recorded plat of the Community (or which is designated by any words which similarly signify such property is for the use of the Owners in the Community whether by recorded plat of survey or otherwise, or designated for public use), shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority. Declarant shall be under no obligation to improve any property for recreational use by the Owners.

(e) The Association hereby covenants and agrees to accept all such conveyances of Common Property. With respect to any improved Common Property, issuance of a Certificate of Occupancy (if required) by the county where the Property is located, shall be conclusive evidence that said property complies with all building and construction standards of the county where the Property is located.

2.02 Owners Rights/Liability.

(a) Every Owner shall have a right and easement to use and enjoy the Common

Property, which right shall be appurtenant to and shall pass with the title to every Unit upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners to use and enjoy any part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish.

(b) Owners, occupants and their guests shall use the Common Property at their own risk and shall assume sole responsibility for their personal belongings used or stored on the Common Property. 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 the Common Property. 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.

2.03 Rights of the Association.

The rights and privileges conferred to the Owners in Article II, Section 2.02 hereof shall be subject to the right of the Association acting through the Board to:

- (a) Promulgate rules and regulations relating to the use, operation and maintenance of the Common Property;
- (b) Charge reasonable fees in connection with the admission to and use of facilities or services; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;
- (c) Suspend the voting rights of any member and the Owner's right of enjoyment of the Common Property;
- (d) Grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, or to any quasi-public agency or to any utility company or cable television system;
- (e) Enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof;
- (f) Borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest, any or all of the Association's property, including Common Property and revenues from assessments, user fees and other sources;
- (g) Dedicate or transfer all or any part of the Common Property or interest herein to any municipality or other governmental body, agency or authority for such purposes and

subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall cease to be subject to this Declaration or all or any part of the restrictions while held by any such municipality or other governmental body, agency or authority; and

(h) To sell, lease; or otherwise convey all or any part of its properties and interest therein; provided, however that the Association shall not sell, encumber by security interest, convey, dedicate or transfer any Common Property or interest therein without the approval of two-thirds (2/3) of the Members and Declarant for so long as Declarant has the right to appoint and remove members of the Board.

(i) To permanently close different amenities which may exist on the Common Property.

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

2.05 Entrance Easements. It is contemplated that certain easements for the erection and maintenance of entrance monuments, subdivision signs, walls, fences and other structures intended to provide an attractive atmosphere or to provide privacy to Owners within the Community will be reserved by the Declarant as set forth on the recorded subdivision plat of the Community. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace and re-erect any such structures within the easement areas, as well as the right to plant grass, plants, flowers, shrubs and trees, to tend and garden the same, and to generally landscape the area within said easements to keep them clean, attractive and uniform in appearance for the benefit of all Owners within the Community. All Owners taking title to any Unit upon which such an easement lies will take title subject to the easement rights set forth herein, as well as such rights as may be set forth in the deed conveying such easements to the Association. Such easements shall be Common Property.

2.06 Encroachment Easements. If any buildings or other improvements initially constructed by Declarant, or by any Owner who constructed the original dwelling so long as said Owner has had the plans for the original dwelling approved by the ACC, including without limitation any eaves, roof overhangs, balconies, siding, porches, or other structures which may be attached to the walls and roof of such buildings, encroach onto or over or extend into the air space of any portion of the Common Property, or, conversely, if any such improvements initially constructed on the Common Property encroach onto or over portions of any Unit, a valid easement for the encroachment and for the maintenance, repair and replacement thereof, shall exist so long as the encroachment exists.

2.07 Structural Support. Each Unit or improvement on a Unit which contributes to the structural

support of another Unit or improvement on such Unit shall be burdened with an easement of structural support. Said easement for structural support shall be appurtenant to and shall pass with the title to every benefitted and burdened Unit.

2.08 Delegation of Use. Any Owner may delegate his right to use and enjoy the Common Property to the members of his family, his social invitees or his tenants who reside on a Unit. Tenants who reside in a Unit shall have the same rights of delegation as an Owner. Any delegation of rights must be made in accordance with the Bylaws and will be subject to reasonable regulation by the Board and in accordance with the procedures it may adopt.

ARTICLE III

THE RESIDENT'S ASSOCIATION

3.01 Purposes. Powers and Duties of the Association. The Association shall be formed as a non-profit organization for the primary purpose of performing certain functions for the common good and general welfare of the Community. To the extent necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code, and (b) shall have the power to exercise all of the rights, powers and privileges of the Association as set forth in this Declaration.

3.02 Membership in the Association. Every Owner shall automatically be a Member of the Association and such membership shall terminate only as provided in this Declaration.

3.03 Voting. Members shall be entitled to one equal vote for each Unit owned. When more than one Person holds an ownership interest in any Unit, the vote for such Unit shall be cast as those Owners decide and instruct the Secretary prior to any meeting. If the Secretary is not instructed, the Unit's vote shall be suspended in the event more than one Owner of a Unit attempts to cast it.

3.04 Board of Directors and Officers.

(a) Board. The affairs of the Association shall be managed by a Board of Directors. The Board may make and enforce reasonable rules and regulations governing the use of the Units and the Common Property which rules and regulations shall be consistent with the rights and duties established by this Declaration. The number of directors and the method of election of directors shall be set forth in this Declaration and in the Bylaws of the Association. Except to the extent otherwise expressly required or authorized by the Georgia Nonprofit Corporation code or this Declaration, the Association's Bylaws or Articles of Incorporation, the powers inherent in or expressly granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Members.

(b) Officers. The number of officers and the method of election of officers shall be set forth in this Declaration and the Bylaws of the Association. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation,

or in the Bylaws of the Association, officers of the Association and/or the Board of Directors shall be appointed by the Declarant until such time as Declarant no longer has the right to appoint and remove the members to the Board of Directors.

(c) Casting of Votes. The votes of the Members shall be cast under such rules and procedures as may be prescribed in this Declaration or in the Bylaws of the Association, as amended from time to time, or by law.

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

(a) Shall be delinquent in the payment of any assessments, fine, charge, or penalty levied by the Association pursuant to the provisions of this Declaration; or

(b) Shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of the Common Property.

Any suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default. No such suspension shall prevent an Owner's ingress to or egress from his Unit.

3.06 Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles of Incorporation of the Association, and the Bylaws of the Association (the "Bylaws"), as each may be modified or amended.

3.07 Control by Declarant and Appointment of the Board. Until such time as Declarant no longer has the right to appoint and remove members of the Board, the Board of the Association shall consist of at least two (2) members.

Notwithstanding anything to the contrary which may be contained herein, in the Articles of Incorporation or the Bylaws of the Association, Declarant shall retain the right to appoint and remove members of the Board until the first of the following events shall occur: (i) ten (10) years after the date on which Declarant or an affiliate of Declarant no longer has a fee simple interest in any of the Units in the Community; (ii) the surrender by Declarant of the authority to appoint and replace directors in writing executed by the Declarant or (iii) December 31, 2035. Upon the final expiration of all rights of Declarant to appoint and remove directors of the Association a special meeting of the Association shall be called. At such special meeting (the "Turnover Meeting") the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association, and any agreements or contracts executed by or on behalf of the Association during such period, which Declarant has in its possession. Notwithstanding any other language to the contrary, the Board of Directors appointed by the Declarant may, by written notice to the Owners, retain the power and authority to act on behalf of the Association, and to exercise all rights available to Board members until such

time as a new Board of Directors has been elected. At or prior to the Turnover Meeting, appointees of the Declarant may resign their positions as Members of the Board of Directors and/or Officers of the Association. Upon such resignation, the Declarant and all affiliated individuals, entities and appointees' positions of the Association shall have no responsibility or obligations for the management of the Association subsequent to the date of resignation. It shall be the Owners, through election of a Board of Directors comprised of Owners, responsibility to manage the Association subsequent to such resignation. By acceptance of a deed, each Owner agrees to save harmless each Officer and Board Member appointed by the Declarant, as well as the Declarant, from and against any and all matters which in any way relate to the management of the Association subsequent to resignation of the Declarant appointees. Each Owner by acceptance of a deed to or other conveyance of a Unit vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section.

3.08 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

3.09 Association Maintenance Responsibilities. Except as may be herein otherwise specifically provided, the Association shall maintain, landscape and keep in good repair as the case may be: (i) all portions of the Common Property, improvements thereon, if any, as such areas are designated on the final plat or plats of the Subdivision recorded in the records of the county where the Property is located; (ii) the entry way entrance signs and monuments, landscaping, entrance wall or fence, if any; (iii) the privacy wall and/or fence, if any, serving the subdivision, all detention areas designated as Common Property whether or not such areas are included within a Unit boundary or owned by the Association; (iv) all lighting and irrigation facilities and equipment, if any, located within the Common Property or within any landscape easements as shown on the recorded subdivision plat; (v) intentionally omitted; (vi) intentionally omitted; and (vii) all utility lines, facilities and equipment located within the Common Property if such utility lines, facilities or equipment are not maintained by a public authority, public service district, public or private utility or other person. Maintenance requirements shall include, but shall not be limited to, the maintenance of the drainage system and the investigation of complaints regarding the system. The obligations and duties set forth here and above shall be the sole responsibility of the Association and all costs and expenses incurred in performing such work shall be deemed to be Common Expenses. The Association shall not be liable for injury or damage to any person or property caused by the elements or by any Owner or any other person. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibilities of the Association, or from any action taken by the Association to comply with any law, ordinance or with any other directive of any municipal or any governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

ARTICLE IV

ASSESSMENTS AND MAINTENANCE CHARGES

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

- (a) To pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Units owned by him;
- (b) To pay to the Association any special or specific assessments for capital improvements and any fines, penalties or other charges which may or shall be levied by the Association pursuant to this Declaration against all Units owned by him;
- (c) That there is hereby created a continuing charge and lien upon all Units owned by him against which all assessments, fines, penalties and other charges are made to secure payment of such items and any interest thereon as provided herein and costs of collection including reasonable attorneys' fees;
- (d) That such continuing charge and lien on such Units binds such Units in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Units whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except as may be stated herein;
- (e) That no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Unit or Units from liability for any assessment thereafter assessed;
- (f) That all annual, specific, and special assessments (together with interest thereon as provided for in the Act, and costs of collection including reasonable attorneys' fees actually incurred as provided for in the Act) levied against any Unit or Units shall be a personal obligation which will survive any sale or transfer of the Units or Units owned by an Owner. Each grantee of an Owner will be jointly and severally liable for such sums as may be due and payable at the time of the conveyance.

4.02 Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of providing for the common good and general welfare of the people of the community of the Community, including, but not limited to, and in addition to other purposes set forth in this Declaration, security, acquisition, construction, improvement, maintenance and equipping of the Common Property, the enforcement of this Declaration, the enforcement of the architectural controls of the ACC, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts incurred by the Association.

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

4.04 Annual Assessment. 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 Board shall cause the budget and the assessments to be levied against each Unit 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 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. Annual assessments shall be levied equally on all similarly situated Units and 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 any past due assessments. Unless otherwise provided by the Board, the annual assessment shall be paid in one annual installment. Annual assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, improvements to 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. Annual assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, garbage collection, landscape maintenance, maintenance of the sidewalks and appurtenant facilities, and 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.

4.05 Special Assessments. Nonrecurring Maintenance. and Capital Improvements. The Association, acting through the Board of Directors, may levy a special assessment against all Owners of up to Two Hundred Fifty and No/100 Dollars (\$250.00) per Unit per year without a vote of the Association for any unbudgeted or unanticipated expenses or expenses in excess of those budgeted. In the event the Board levies a special assessment in an amount greater than Two Hundred Fifty and No/100 Dollars (\$250.00) per Unit per year, then such special assessment must be approved by a majority of the Members who attend an Association meeting to become effective. Special assessments shall be due and payable as determined by the Board. The Board may, in its sole discretion, permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.06 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 even if the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the Bylaws and the costs of maintenance performed by the Association for which an 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 assessed equitably among the benefited Units 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.

4.07 Subordination of Liens to Mortgages. Notwithstanding anything to the contrary in this Declaration or any other document related thereto or executed in connection therewith, the lien of all assessments authorized herein is hereby made subordinate to the lien of any Mortgage placed in a Unit if, but only if, all assessments and charges with respect to such Unit having a due date either before or on the date the Mortgage is filed of record have been paid. This lien subordination applies only to assessments and charges 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 Unit pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the Unit pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination and shall not relieve the Owner of the Unit of the personal obligation to pay all assessments coming due during such period of his ownership. This subordination shall not relieve a Unit from the lien provided for in this Declaration (except to the extent a subordinated lien is extinguished by a foreclosure of a Mortgage). No sale or transfer of a Unit 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 such Unit of any personal obligation nor shall it relieve a Unit or the then Owner of a Unit from liability for any assessment which becomes due after such sale and transfer.

4.08 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 remain as fully obligated as before the conveyance to pay the Association any and all amounts due; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in the amount of the greater of Ten (\$10.00) Dollars or Ten percent (10%) of the amount due, as provided for in the Act, and any unpaid assessment and late charge shall bear interest at the rate of Ten percent (10%) per annum, as provided for in the Act. As provided in O.C.G.A. Section 44-3-232 of the Act, the obligation for the payment of assessments and fees arising hereunder shall include the costs of collection, including, without limitation, reasonable attorney's fees actually incurred. The award of attorneys' fees shall not be construed in accordance with the provisions of O.C.G.A. Section 13-1-11(a)(2). 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 thirty (30) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a claim of lien on the public records of the county in which the Property is located, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments. Each Owner, by acceptance of a deed vests in the Association the right and power to bring all actions against such Owner personally, for the collection 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 the Unit 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 and recreational facilities 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 members obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such Unit in favor of the Association.

4.09 Date of Commencement of Assessments. Assessments shall commence when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a Unit on the date that the Unit is first occupied for residential purposes. A Unit shall be deemed to be occupied for residential purposes when it has been improved with a dwelling for which a certificate of occupancy has been issued and has been conveyed to an Owner other than the Declarant who intends to occupy the dwelling, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy. No assessments shall accrue on a model home utilized for the purpose of selling other residences in the Community until the home is conveyed to an Owner who intends to live in or lease the residence.

4.10 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint and remove the directors and officers of the Association, Declarant may, with Declarant's sole discretion, but shall not be required to: (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 annual, 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); (b) pay assessments to the Association; or (c) 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. Any advance of funds by Declarant shall not obligate Declarant to continue payment in the future.

4.11 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.

4.12 Estoppel Letter. The Association shall, within five (5) days after receiving a written request therefor for a reasonable charge, 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.

4.13 Initiation Fee. Upon every sale of a Unit to an Owner other than a Declarant, successor Declarant or a Builder acquiring such Unit during the ordinary course of business, an initiation fee to the Association shall be collected from the new Owner at the closing of such transaction, in an amount to be determined by resolution of the Board of Directors. If not collected at closing, it shall be paid immediately upon demand to the Association. The initiation fee shall constitute a specific assessment against the Unit, shall be in addition to, the annual and special assessment. It shall not be considered an advance payment. 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 the Declaration. This specific assessment shall not apply to a Mortgagee who becomes the Owner of a Unit through foreclosure or other means pursuant to the satisfaction of the indebtedness secured by such Mortgage. Any Owner acquiring the Unit from Mortgagee who become an Owner shall be required to pay an initiation fee.

ARTICLE V ARCHITECTURAL CONTROL COMMITTEE

5.01 Purpose. Powers and Duties of the Architectural Control Committee (ACC). The purpose of the ACC is to review and approve any proposed installation, construction or alteration of any Unit to preserve a harmonious and aesthetically pleasing design to the Community. All plans shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standard of the neighborhood and with the standards of the Community, and (ii) as to the location of any construction with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and everything necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Unit.

5.02 Architectural Control Committee. Until the Declarant no longer has the right to appoint and remove members of the Board, the Declarant shall have the sole right, power and authority under this Article. Once Declarant no longer has the right to appoint and remove members of the Board in accordance with Section 3.07, the Board of Directors shall appoint an Architectural Control Committee of the Association, which shall then have such jurisdiction over architectural control under this Article as may have been relinquished by the Declarant. The Declarant may, in its sole discretion, relinquish architectural control as to certain types of improvements or modifications to the Architectural Control Committee while retaining control over all new building and construction in the Community. For example and without limitation, the Declarant may relinquish control over modifications of existing structures to the Architectural Control

Committee while retaining all authority to review and approve new home construction. Any right, power or authority of the Declarant which may be relinquished to the Association prior to the termination of the rights of Declarant hereunder shall be by written instrument only. No such right, power or authority shall be relinquished by implication or otherwise. The establishment of an advisory Architectural Control Committee shall not be deemed to be a relinquishment by Declarant of any of its right, power and authority hereunder. After the termination of all rights of Declarant hereunder, the Architectural Control Committee shall have all right, power and authority to review and approve building and construction activity within the Community hereunder.

5.03 Operations of the ACC. The ACC may adopt and promulgate Design Standards, and when appropriate shall make findings, determinations rulings, and orders with respect to the conformity and harmony with the external design and the general quality of the Community and any Design Standards adopted by the ACC, of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations, or approvals, which may include specific requirements or conditions, pursuant to the provisions of this Declaration.

5.04 Design Standards.

(a) The ACC may from time to time (but shall not be required to) adopt, promulgate, amend, revoke and enforce guidelines (the "Design Standards") which shall be binding against all Owners unless overruled, cancelled or modified by a majority of the Members at a meeting and Declarant for the purposes of:

- (i) Governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;
- (ii) Governing the procedure for such submission of plans and specifications;
- (iii) Establishing guidelines with respect to the approval and disapproval of landscaping, design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and
- (iv) Assuring the conformity and harmony of external design and the general quality of the Community.

(b) The ACC may publish copies of any current Design Standards adopted by it, in which case they shall be made readily available to Owners and prospective Owners and to all applicants seeking the ACC's approval.

5.05 Submission of Plans and Specifications. No Unit shall be altered in any way which materially changes the exterior appearance of the Unit, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the

ACC.

5.06 Approval of Plans and Specifications. Approval for use, in connection with any Unit, of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted in connection with another Unit. Approval of any such plans and specifications relating to any Unit, however, shall be final as to that Unit and such approval may not be revoked or rescinded thereafter, provided that Owner has adhered to, and complied with, the approved plans, and any conditions attached to any such approval.

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

- (a) The failure to include information in such plans and specifications as may have been requested;
- (b) The failure of such plans or specifications to comply with this Declaration or the Design Standards;
- (c) Any other matter which, in the judgment of the ACC and/or its authorized agent would be likely to cause the proposed installation, construction or alteration of a Unit (i) to fail to conform with the external design and general quality of the Community, or (ii) to be incompatible with topography, finished ground elevation and surrounding structures. In any case in which the ACC, or its authorized agent shall disapprove any plans and specifications submitted hereunder, or shall attach conditions to its approval, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. The ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

5.08 Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within forty five (45) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be in writing. Failure by ACC to take action within forty-five (45) days of receipt of plans and specifications properly submitted for approval shall be deemed approval of such plans and specifications. Upon the approval of the plans and specifications, no further approval under this Article V shall be required unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications.

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

accordance with the terms of this Section.

5.10 Violations. If anything shall be erected, placed, maintained or altered upon any Unit, other than in accordance with the plans and specifications approved by the ACC, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article. If there is a violation, then the Board shall have the right to pursue its legal remedies (as authorized and defined in Article VIII).

5.11 Fees. The ACC may impose and collect reasonable fees to cover the costs of inspections and plan reviews performed pursuant to this Article. Said fees may include, but shall not be limited to, the fees of a licensed landscape architect or architect employed by the ACC to review submitted plans and specifications.

5.12 Nondiscrimination by ACC. The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age or national origin. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age or national origin.

5.13 Disclaimer as to ACC Approval. Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from plans and specifications nor compliance with any local, state or federal law including local building codes and zoning ordinances. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by reason of any mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the ACC, the Board or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance by any of the above.

5.14 Declarant. Notwithstanding anything to the contrary which may be contained herein the provisions contained in this Article, as well as all other architectural control provisions contained in the Declaration, the Design Standards or the Bylaws shall not apply to Declarant, affiliates of the Declarant, any predecessor of Declarant, or improvements to the Common Property by or on behalf of the Association. In addition, said provisions shall not apply to any Builder; provided, however, any Builder must submit to Declarant (in a format satisfactory to Declarant within Declarant's sole discretion) plans and specifications of Builder's proposed structure(s). Builder shall not commence construction of any structure on the Unit without obtaining Declarant's written approval, said approval being in Declarant's sole discretion. This Article may not be amended without the written consent of Declarant until such time as

Declarant no longer has the right to appoint and remove members of the Board.

ARTICLE VI

GENERAL COVENANTS AND RESTRICTIONS

6.01 Application. The covenants and restrictions contained in this Article VI shall pertain and apply to all Units and to all improvements erected or placed thereon.

6.02 Association's Maintenance Responsibility.

(a) General. The Association shall maintain and keep in good repair the Common Property, which shall include, without limitation, the maintenance, repair and replacement of all landscaping and improvements situated thereon, if any. The Association shall also maintain (whether or not constituting Common Property) the following: (i) all Community entry features and entry area landscaping, including, without limitation, any irrigation system and/or lighting system serving such entry features and landscaping; (ii) those portions of a residential dwelling located on a Unit; (iii) lawn and landscaping to a Unit as provided herein; (iv) all detention facilities, to the extent not maintained or controlled by a governmental entity; and (v) all pipes, utility lines, wires, plumbing, conduits and systems, including without limitation, water and sanitary sewer pipes or facilities that serve more than one (1) Unit, if and to the extent the same are not maintained on an ongoing basis by a governmental authority or third party.

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.

(b) Additional Maintenance Assumed by Association. The Association shall have the right, but not the obligation, to maintain property that it does not own, whether located within or outside of the Community, where the Board has determined that such action would benefit the Owners. In addition to the foregoing, the Board shall have the right, with the consent of the Declarant and without the consent of the members, to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners.

6.03 Owner's Maintenance Responsibility. Except for maintenance performed on or to a Unit by the Association, all maintenance of the Unit and all structures and other improvements located thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Unit in a manner consistent with this Declaration and the Community-Wide Standard. Such maintenance obligation shall include, without limitation, the following: (a) prompt removal of all litter, trash, refuse, and waste; (b) keeping improvements, and exterior lighting in good repair and working order; (c) complying with all governmental health and police requirements; (d) repair of exterior damage to improvements; (e) maintaining grading and storm water drainage as originally established on the Unit; and (f) maintenance, repair and replacement of any pipe(s), wire(s) and

conduit(s) which serve only the Unit, regardless of whether said pipe(s), wire(s) or conduit(s) are located within or outside of a Unit's boundaries; and (g) all portions of the Unit which are not maintained by the Association as provided herein.

6.04 Party Walls. Each wall built as part of the original construction of a residential dwelling located on a Unit or added pursuant hereto which shall serve and separate any two (2) adjoining Units or the residential dwellings located thereon shall constitute a party wall 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 shall be shared by the Owners who make use of the wall in equal proportions. If a party wall is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall may restore it, and the other Owner who is benefited by the wall 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.

All such repair or rebuilding shall be done within a reasonable period of time, and in such workmanlike manner with materials comparable to those used in the original wall or fence, and shall conform in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. Whenever any wall or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size as the original wall.

6.05 Exterior Unit Maintenance.

(a) By the Association. As provided herein, the Association shall maintain and keep in good repair the exterior portions of all dwellings located on Units in the Community on a schedule determined by the Board of Directors in its sole discretion. Exterior maintenance performed to a residential dwelling located on a Unit by the Association shall be limited to the following: (i) exterior surfaces of garage doors (the owner shall be responsible for the operation of the garage doors and all related equipment); (ii) roof decking and shingles or other covering and surface materials on Units; (iii) downspouts and gutters, if any; (iv) painting and/or pressure washing the exterior building surfaces of a residential dwelling located on a Unit, with the exception of doors, hardware and glass as more particularly described in subsection (b) below; and (v) painting and/or staining and/or sealing any deck or balcony which is attached to a residential dwelling on a Unit. Notwithstanding the foregoing, the Association shall not be responsible for waterproofing foundations either above or below grade. The Board of Directors may promulgate rules setting forth the extent of maintenance to be performed by the Association and may assume responsibility for providing additional maintenance as long as all Units are maintained according to the same standard. The Board of Directors may authorize the officers of the Association to enter into contracts with any Person or Persons to perform maintenance hereunder on behalf of the Association.

In the event any personal property of an Owner or Occupant, including, but not limited to, any satellite dish, grill or patio furniture, is stored, placed or affixed to a deck, patio, balcony, the exterior of a residential dwelling, or such other area the Association is responsible for maintaining

pursuant to this Article 5, the Association shall have the right, but not the obligation, in the Board's sole discretion, to remove and reinstall such personal property in order to perform its maintenance responsibilities hereunder, and any and all costs associated with the removal and reinstallation of such property may be assessed against the Unit of such Owner or Occupant as a specific assessment. Additionally, in the event the Association incurs additional maintenance costs as a result of any personal property of an Owner or Occupant being stored, placed or affixed to any area the Association is obligated to maintain, the Association shall have the right to specifically assess such additional maintenance costs against the Unit of such Owner or Occupant. In the event damage or destruction of any such personal property occurs during the performance of any maintenance, repair or replacement hereunder, the Association, and its officers, directors, agents or employees shall not be liable for such damage or destruction.

(b) By the Unit Owner. Except for maintenance performed on or to a Unit by the Association, all maintenance of the Unit and all structures and other improvements located 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. Maintenance by the Owner shall include, without limitation, the following: (i) all steps, stoops, decks (whether enclosed or not), balconies, patios (whether enclosed or not) and patio surfaces and landscaping placed on the patio, decks or balconies, if any (with the exception of painting and/or staining decks which shall be the Association's responsibility as provided above); (ii) HVAC or similar equipment; (iii) all doors, including screen and storm doors, garage doors, and door hinges, frames, glass, screens and hardware which are part of the entry system, to the extent the same are not maintained by the Association pursuant hereto; (iv) hose bibs contained in the exterior walls of a Unit; (v) all exterior lighting fixtures located on or exclusively serving a Unit; (vi) all windows, including, without limitation, window screens, frames, glass and hardware, to the extent the same are not maintained by the Association pursuant hereto; (vii) all exterior hardware; (viii) foundations and footings, including waterproofing, either above or below grade; and (ix) all driveways and walkways serving the Unit.

Notwithstanding the foregoing, each Owner of a Unit shall be obligated to: (i) perform his or her maintenance responsibility in such manner so as not to unreasonably disturb other Persons in or on other Units; (ii) promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible; and (iii) not make any alterations in the portions of the Unit which are to be maintained by the Association, if any, remove any portion thereof; make any additions thereto, or do anything with respect to the exterior or interior of such Unit or the structures located thereon which would or might increase the Association's maintenance costs or jeopardize or impair the safety or soundness of any Unit or any structure or improvement located thereon, without first obtaining the written consent of the Board and all Owners and Mortgagees of the Units affected. Each Owner shall also not impair any easement without first obtaining the written consent of the Association and of the Owner or Owners and their Mortgagees for whose benefit such easement exists.

6.06 Lawn and Landscape Maintenance.

(a) Common Property. As provided herein, the Association shall be responsible for all landscaping to green space and open space areas. The Board of Directors in its sole discretion may

leave portions of the Common Property, if any, as undisturbed natural areas and may change the landscaping in the Community at any time and from time to time. The Board of Directors may promulgate rules setting forth the extent of landscaping maintenance to be performed by the Association to the Common Property and the rights of Owners with respect to adding or modifying landscaping improvements, including, for example allowing seasonal flowering plants in certain portions of the Common Property at the expense of the Owner. Owners shall not add trees, shrubs, bushes, plants or other vegetation to the Common Property without the prior written consent of the Board of Directors. Any approved landscaping improvements originally installed by an Owner which are not properly maintained, including, but not limited to, damaged, diseased or dead plants, shrubs and trees may, at the sole discretion of the Board of Directors, be removed from the Community and all costs associated therewith may be assessed against the Owner and the Unit as a specific assessment.

(b) **Lawn and Landscaping to Units.**

(i) **By the Association.** As provided herein, the Association shall provide lawn and landscaping to Units which shall include, but not be limited to the following: (A) lawn mowing on a regular basis; (B) tree and shrub pruning; (C) lawn fertilization; (D) weed control in pine straw beds; and (E) installation of pine straw on a schedule determined by the Board of Directors in its sole discretion. The Board of Directors may, with the consent of the Declarant, change the level of yard maintenance performed so long as all Units are maintained according to the same standard.

(ii) **By an Owner.** Each Owner shall be responsible for all lawn and landscaping to a Unit which is not provided by the Association pursuant to subsection (a) above, which shall include, but not be limited to, the following: (A) shrub fertilization; (B) monitoring plants, shrubs and lawns for insecticide and disease; (C) watering landscaped areas; and (D) keeping lawn and garden areas generally alive and attractive. All lawn and landscape maintenance to Units shall be performed in a manner consistent with the Community-Wide Standard. Any landscaping improvements originally installed by an Owner which are not properly maintained, including, without limitation, dead, diseased, damaged or dying plants, trees and shrubs may, at the sole discretion of the Board and, subject to the notice provisions hereof, be removed from the Community and all costs associated therewith shall be a specific assessment against the Unit of such Owner.

6.07 Failure of Owner to Maintain. 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 under this Declaration, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such 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 to be performed. 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 period of time. If an Owner does not comply with the provisions hereof, the Association may provide such maintenance, repair

or replacement and all costs thereof shall be assessed against the Owner and the Unit as a specific assessment. This Section shall not apply to any Unit(s) owned by Declarant, unless improved with a dwelling and occupied as a residence.

6.08 Restriction of Use. Units may be used for single-family residence purposes only and for no other purpose. The use of a portion of the residence as an office by Owner or his tenant shall not be a violation of this covenant if such use does not create regular customer client or employee traffic or otherwise create a nuisance. Declarant may operate a sales office and/or model home in a Unit or Units. No business may be conducted within a Unit which would require increased subdivision traffic by the regular attendance of non-residents of the Community within and to such Unit. 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 house 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 outside 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. 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.

6.09 Resubdivision of Property. Except for split, division or subdivision of a Unit which is authorized by Declarant, no Unit may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise except if approved pursuant to Article V.

6.10 Partition of Common Property. 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: (a) all Owners of all portions of the property located within the Community; and (b) all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Units.

6.11 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Unit without prior written approval obtained pursuant hereto. Any approval may, as a condition or approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices of controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape. Catch basins, retention ponds, detention ponds, drainage easement areas and related drainage facilities are for the purpose of controlling the natural flow of water only. No obstructions or debris shall

be placed in these areas. No Owner may obstruct or alter the drainage flows after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval of the ACC. In the event storm water drainage from any Unit or Units flows across another Unit, provision shall be made by the Owner of such downstream Unit to permit such drainage to continue, without restriction or reduction, across the downstream Unit and into the natural drainage channel or course although no specific drainage easement for such flow of water is provided on the recorded plat for the Community. The elevation of a Unit shall not be changed so as to materially affect the surface elevation or grade of surrounding Units. Perimeter foundation drains and sump pump drains shall be connected whenever feasible into a subsurface drainage tile. Down spouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Unit and shall be liable for the cost of all repairs thereto or replacements thereof.

6.12 Landscaping. No construction or alteration of the exterior of any Unit shall take place without the prior written approval by the ACC.

6.13 Temporary Buildings. No temporary building, trailer, or building under construction shall be used, temporarily or permanently, as a residence on any Unit. Notwithstanding the foregoing, nothing shall prohibit the Declarant and/or a Builder purchasing a Unit from the Declarant from maintaining a sales trailer upon a Unit.

6.14 Signs.

(a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the ACC's prior written approval of plans and specifications therefor, be installed, altered or maintained on any Unit, or on any portion of a Unit visible from the exterior thereof, except signs as may be required by legal proceeds, "For Sale" or "For Rent" signs having a maximum face area of four (4) square feet; provided, however, that if the Association is making "For Sale" or "For Rent" signs available for the use of Owners, the signs made available by the Association must be used; or one "life event" sign commemorating a birth, graduation or similar life event for a period not to exceed fourteen (14) days from the date of the event; political signs for time periods determined by the Board ..

(b) The Board may impose a fine of \$100.00 per day for the display of a sign in violation of this provision which is not removed by Owner within twenty four (24) hours after written notice to Owner.

(c) Notwithstanding any other provision in this Declaration, the Declarant may erect and place such signs on any portions of the Property owned by the Declarant, or on any Common Property, which Declarant, in its sole discretion, deems appropriate.

6.15 Insects. No Person shall permit any thing or condition to exist upon any Unit which shall induce, breed or harbor noxious insects. Electric bug killers, "zappers", and other similar devices shall not be installed at a location or locations which result in the operation thereof becoming a

nuisance or annoyance to other Owners or Occupants. Any bug killing devices shall be operated only when outside activities require the use thereof and shall not be operated continuously.

6.16 Fences and Exterior Structures. No fence or wall of any kind shall be erected, maintained, or altered on any Unit except in accordance with the requirements of Article V. No artificial vegetation, exterior sculptures, fountains or similar items shall be constructed, placed or maintained on any Unit without the prior written approval of the ACC. Any graffiti appearing on any fence shall be removed and/or repainted within 72 hours of discovery by the Association.

6.17 Entry Features and Driveways. No driveway or improvements to any entry feature shall be constructed or altered on any Unit without obtaining prior written approval in accordance with the requirements of Article V.

6.18 Antennae. No transmission antenna, of any kind, may be erected on a Unit unless approved in writing in accordance with the requirements of Article V. No such approval shall be necessary to install: (a) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services or to receive or transmit fixed wireless signals via satellite, that are one meter or less in diameter; (b) antennas designed to receive video programming services via multi-point distribution services or to receive or transmit fixed wireless signals other than via satellite that are one meter or less in diameter or diagonal measurement; or (c) antennas that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the dwelling unless such installation: (i) imposes unreasonable delay or prevents the use of the antennae; (ii) unreasonably increases the cost of installation; or (iii) an acceptable quality signal cannot otherwise be obtained.

6.19 Clotheslines, Garbage Cans. etc. No clotheslines shall be permitted. All equipment, pool pumps, garbage cans, and woodpiles shall be kept in garage or screened by adequate planting or approved fencing so as to conceal them from view by neighboring residences and streets. No trash or waste may be burned within the Community.

6.20 Vehicles and Parking.

(a) Vehicles shall be parked only in appropriate parking spaces serving the Unit or other designated parking areas established by the Board, if any. All parking shall be subject to such other rules and regulations as the Board may adopt from time to time. Notwithstanding the foregoing, the Declarant, and their respective agents, subcontractors and assigns shall have the right, during regular business hours, to park vehicles on any and all streets within the Community as needed in order to facilitate the construction, development and build out of the Community. 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 "parking areas serving a Unit" shall refer to the number of garage parking spaces and if and only if the Owner or 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 located on such Unit. All homes shall contain a garage; carports shall not be permitted. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. Garages shall be used primarily for the parking of vehicles and not for storage or other purposes. Garages shall not be converted to additional living space except with written permission pursuant to Article V hereof.

(b) 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 five (5) 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 five-day period, such vehicle may be removed from the Community by the Board of Directors or the appropriate authority of the county or city in which the Community is located. Any towed vehicle, boat, personal watercraft, 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 temporary removal of such vehicle to break the continuity of the twenty-four (24) period 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. No eighteen wheel trucks or the cabs of such trucks or trucks with a load capacity in excess of three-quarters of a ton shall be parked, kept or stored within the Community except during the time reasonably necessary to provide service or delivery within the Community.

(c) 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, ladders, ladder racks, signage of a commercial or business nature or vehicles which are not primarily used for the transportation of passengers. Commercial vehicles shall not be permitted in the Community, except if kept in a garage; provided however, 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 within the Community.

(d) If any vehicle is parked on any portion of the Common Property in violation of this Section or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity that will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

(e) If a vehicle is parked on a right of way such that it is blocking another vehicle or

access to a Unit, is obstructing the flow of traffic, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this Section, the Declarant, its affiliates, the Association and its affiliates, and any director, officer, employee or agent of any of the foregoing, shall not be liable to any Person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

(f) The purpose of this Section is to help maintain the neat and attractive appearance of the Community by requiring the streets of the Community to remain cleared, and for larger vehicles and equipment to be either hidden from view or eliminated altogether if intended to be stored on more than a temporary basis. In effectuating the purpose of this Section, the ACC may adopt rules and regulations as part of the Design Standards.

(g) The provisions of this Section shall not apply to Declarant or to any Builder in the process of constructing any Unit.

6.21 Artificial Vegetation, Gardens, Play Equipment, Exterior Sculpture, Water Features and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals), exterior sculpture, fountains or water features may be erected on any Unit, without prior written approval in accordance with the provisions of Article V hereof or as may be otherwise permitted as provided in the Design Standards.

6.22 Sale and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant, any Builder and their respective agents and successors and assigns to maintain and carry on within the Property such activities as may be reasonably required or convenient to the completion, improvement and sale of Units including, but not limited to, construction trailers or model residences.

6.23 Animals. No animals, including birds, insects, and reptiles, may be kept on any Unit unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Unit unless plans, specifications and location for said structure have been approved by the ACC. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Unit. No more than two (2) dogs, cats or other usual and common household pets along with two (2) caged animals such as hamsters, guinea pigs and turtles may be kept in a Unit. There shall not be a limitation on the number of fish which are contained within an aquarium; provided, however, any pets which are permitted to roam free or, in the sole discretion of the Board, endanger the health, make objectionable noise or constitute a nuisance or inconvenience to the Owners or Occupants of other Units or the owner of any property located adjacent to the community may be removed by the Board. If the Owner of such animal fails or refuses to honor such request, the animal may be removed at the direction of the Board of Directors. An Owner's failure to remove fecal matter or other solid waste left in any Common Property or Unit by an animal

owned by an occupant of such Owner's Unit (or their guests or invitees) shall be conclusively deemed to be a nuisance, and shall subject such Owner to such reasonable penalties as may be determined by the Association, including without limitation, upon repeated violations, the removal of such animal as described above. The cost and expense of any removal of an animal under this Section shall be the sole responsibility of the Owner of the Unit where the animal was kept (or was brought by a guest or invitee). In the event that such Owner fails to reimburse the Association for such cost and expense within twenty-one (21) days after the Association's demand for reimbursement, such cost and expense shall become a specific assessment against such Unit. No dog runs, runners or exterior pens for household pets shall be erected or maintained on any Unit unless approved in accordance with the provisions of Article V. Dogs which are household pets shall at all times whenever they are outside a Unit be confined on a leash. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community.

6.24 Solid Waste.

- (a) No person shall dump rubbish, garbage, or any other form of solid waste on any Unit or on Common Property.
- (b) Except for building materials employed during the course of construction approved by the ACC, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Unit unless screened or otherwise handled in a manner approved by the ACC.
- (c) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such pick-up. At all other times such containers shall be screened or enclosed.

6.25 Nuisances. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition in 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 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.

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

6.27 Lighting and Displays. Except as may be permitted by the ACC, exterior lighting visible from the street shall not be permitted except for: (a) approved lighting as originally installed in a Unit; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the community; (d) seasonable decorative lights for a period not to exceed thirty (30) days from the date of installation; (e) front house illumination of model homes; or (f) other lighting approved under and pursuant to Article V or as may be otherwise permitted as provided in the Design Standards. Religious or holiday symbols and decorations may be displayed on a Unit of the kinds normally displayed in single-family residential neighborhoods; provided, however, the Association may adopt time, place and manner restrictions with respect to said symbols and displays visible from outside structures on the Unit, including limitations on appearance, style, size, and number; and further provided, no decoration or symbol may be placed in a Unit for more than thirty (30) days in any 12-month period.

6.28 Tree Removal. No trees that are more than four inches in diameter at a point 12 inches above the ground shall be removed from a Unit unless approved in accordance with the provisions of Article V hereof or as may be otherwise permitted pursuant to the Design Standards. However, 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 unless approved in accordance with the provisions of Article V. The Association and Owners shall also comply with all zoning conditions and local ordinances applicable to tree removal. In the event of a conflict between the provisions of this Section and any zoning condition or local ordinance, the more restrictive provision shall govern. This provision shall not apply to the removal of trees by the Declarant. The Association shall protect and preserves existing tree cover in all flood prone areas within open space constituting Common Property, except for utility crossings and access points.

6.29 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 of Directors, it would create an unsafe condition.

6.30 Guns. The use, discharge or display of firearms in the Community is prohibited. The term "firearms" includes, without limitation, B-B guns, pellet guns, archery items, and firearms of all types.

6.31 Utility Lines. Except as may be permitted under and pursuant to Article V hereof, no overhead utility lines, including lines for cable television, shall be installed within the Community.

6.32 Flags. No flags may be displayed on any Unit without prior written approval

in accordance with the provisions of Article V hereof or as may be otherwise permitted as provided in the Architectural Guidelines; provided, however no such approval shall be required to: (a) display the flag of the United States of America and the current flag of the State of Georgia in a Unit in accordance with the provisions of the U.S. Flag Code (36 US Code 10) and usual and customary practice; and (b) display a seasonal flag or banner no larger than two feet (2') by four feet (4') consistent with the Community-Wide Standard and other usual and customary practice for a period not to exceed one thirty (30) day period per quarter. The Board of Directors of the Association may promulgate reasonable rules and regulations with respect to the display of flags in the Community, including, without limitation, regulating the size of flags that may be displayed and imposing reasonable time, place and manner restrictions pertaining to the display of the United States flag; provided, however, the Association shall not enact any rule or regulation which has the effect of prohibiting any Owner from displaying the flag of the United States of America in a Unit in the Community in contravention of the Freedom to Display the American Flag Act of 2005.

6.33 Conservation Equipment. No solar energy collector panels or attendant hardware or other conservation equipment, including rain barrels, shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure or otherwise screened from view, as determined in the sole discretion of the Declarant or the Architectural Control Committee as the case may be in accordance with the provisions of Article V hereof or as may be otherwise permitted as provided in the Design Standards.

6.34 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 V hereof and in no event shall any above-ground swimming pool be permitted.

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

6.36 Window Treatments and Awnings. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose. The side of all window treatments which can be seen at any time from the outside of any structure located in a Unit must be white or off-white or may be another acceptable color as may be provided in the Design Standards. Except on Units on which there is maintained a sales office or model home by the Declarant, or as otherwise approved in accordance with the provisions of Article V hereof, no metal, wood, fabric, fiberglass or similar type material awnings or patio covers will be permitted anywhere in the Community.

6.37 Liability. Owners, Occupants and their guests shall use the Common Property and all portions of the Community not contained within a Unit at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. All Owners and Occupants shall have an affirmative duty and responsibility to inspect the Common Property for any defects, perils or unsafe conditions related to the use and enjoyment thereof. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for: (a) personal injury to any person occurring on the Common Property; (b) loss or damage to personal belongings used or stored on the Common Property or on any other portion of the Community; or (c) loss or damage, by theft or otherwise, of any other property of

an Owner or Occupant.

In addition to the foregoing, the Association, the Declarant and their respective officers, directors, representatives, agents and employees 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 from any portion of the Common Property; 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.

ARTICLE VII

EASEMENTS, ZONING AND OTHER RESTRICTIONS

7.01 Easements.

(a) The Declarant hereby expressly reserves for itself and its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:

- (i) The erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television and other utilities and similar facilities;
- (ii) The erection, installation, construction and maintenance of storm-water drains, land drains, detention ponds, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat and for any other public or quasi-public facility, service or function;
- (iii) Slope control purposes, including the right to grade and plant slopes and to prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;
- (iv) The planting or re-planting of hedges, shrubberies, bushes, trees, flowers and plants of any nature;
- (v) The erection, installation, construction and maintenance of fences, walls, monuments, signs, etc. along streets in, around and along, and at entrances to, the Community, and the right to landscape such areas, plant, re-plant and prune hedges, shrubbery, bushes, trees, flowers, grass and plants of any nature; and

- (vi) There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and street signage for the Community, over and upon each Unit which is located at the corner of a street intersection within the Community. The easement and rights herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and signage and the right to grade the land under and around the entry features and signage.
- (b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.
- (c) The Declarant expressly reserves for the benefit of Declarant, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement on, over and across all Units and all Units and all unimproved portions of the Property for the purpose of taking any action necessary to effect compliance with environmental rules and regulations from time to time promulgated or instituted by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

7.02 Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, Design Standards, and amendments or revisions thereto, Declarant reserves an easement across the Community 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 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 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 may use residences, offices or other buildings owned or leased by Declarant as model residences and sales offices 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.

7.03 Common Areas. Notwithstanding anything to the contrary herein, no motorized vehicles, including, but not limited to four wheelers, dirt bikes and motorcycles shall be permitted on any portions of the Community that are designated as "Common Areas" on the Plat.

7.04 Easement. The easements created in this Article VII are in addition to any easements or rights created elsewhere in this Declaration or in other easements of record. The provisions of this Article VII may not be amended without the written consent of the Declarant.

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

ARTICLE VIII ENFORCEMENT

8.01 Right of Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations, Design Standards, if any, 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 plat(s) for the Community and in the deed to such Owner's Unit, if any. The Declarant and 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 provided, however, only one fine may be imposed for a single violation such that an Owner or Occupant may not be fined by the Declarant and the Board of Directors for the same violation; provided, further, Declarant or the Board, as the case may be, may count each day a violation continues after notice thereof as a separate violation. In the event fines or other sanctions are imposed by Declarant hereunder, Declarant shall have any and all rights to collect such fines or sanctions (which fines shall be payable to the Association) and any related charges, including, without limitation, reasonable attorney's fees actually incurred and costs of collection, in the same manner as provided herein for the collection of assessments by the Association acting through the Board.

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, including, without limitation, reasonable attorney's fees actually incurred, maintainable by the Association, the Declarant or an aggrieved Owner. Failure by the Declarant and 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 Standards, 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.

8.02 Occupants Bound. All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and Design Standards 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 Standards. 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.

8.03 Self-Help. In addition to any other remedies provided for herein, the Association, the Declarant, the Architectural Control Committee 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 days written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required 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.

8.04 Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the terms of this Declaration, the Bylaws or the Design Standards by appropriate judicial proceedings or to recover damages. The Board may also impose fines, penalties or other sanctions for any Owner in violation of the terms of this Declaration. In addition, a notice of violation may be filed against the non-complying Owner in the public records of the county in which the Property is located stating the Owner's name and that Owner has failed to comply with the requirements of the Declaration. Said notice of violation may include any information regarding the nature of the violation as may be deemed appropriate in the sole discretion of the Board, the Association, the Declarant. Any beneficiary of this Declaration Declarant, aggrieved Owner or the Board (acting on behalf of the Association) shall be entitled to maintain, in addition to the actions specifically authorized herein, relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

8.05 No Waiver. Unless specifically excepted under the terms of this Declaration, the failure of the Declarant, the Association, or the Owner of the any Unit, his or its respective legal representatives, heirs, successors and assigns, to enforce any restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

ARTICLE IX DURATION AND AMENDMENT

9.01 Duration.

(a) 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 the Act.

9.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Board and/or of the Association, Declarant may unilaterally amend this Declaration by an instrument in writing filed and recorded in the public records of the county in which the Property is located, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Unit or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title to any Unit, such amendment shall be valid only upon the written consent thereto by a majority in number of the Members; or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of a majority of the affected mortgagees. Any amendment made pursuant to this Section shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees if required, and shall be effective upon recordation or at such later date as shall be specified in the amendment itself.

9.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Article IX, Section 9.02 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association to the Members.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the Total Association Vote and Declarant (if the proposed amendment is adopted during the period in which Declarant can appoint and remove Members of the Board). Notwithstanding the above, any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee.

(c) The agreement of at least two-thirds (2/3) of the Total Association Vote, and, if required pursuant to the terms of Article 9.03(b), the Declarant and any mortgagee(s), shall be evidenced by their execution of such amendment. In the alternative, the approval of two-thirds (2/3) of the Total Association Vote may be evidenced by the sworn statement of the President and the Vice President or Secretary of the Association, which sworn statement shall state that the amendment was approved in accordance with the terms of the Declaration and that the approval of the Members was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself.

During any period in which Declarant retains the right to appoint and remove any

directors and officers of the Board and/or of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the public records of the county in which the Property is located, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Unit or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title to any Unit, such amendment shall be valid only upon the written consent thereto by a majority in number of the Members, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself.

ARTICLE X ANNEXATION

10.01 Submission of Additional Property. Declarant shall have the option and right from time to time, without the necessity of consent by the Association, the Board or the Owners, but subject to Article X, Section 10.02 of this Article, to submit all or portions of the Additional Property to this Declaration and thereby to cause the Additional Property, or such portions thereof as may be submitted, to become part of the Property. This option may be exercised by the Declarant in accordance with the conditions and limitations set out in Article X, Section 10.02 of this Article, which are the only conditions and limitations on such right.

10.02 Conditions of Annexation. Any Annexation as permitted in Article X, Section 10.01 of this Article shall be in accordance with the following terms and conditions:

(a) The option to submit portions of the Additional Property may be exercised at any time and from time to time, during a period of ten (10) years from the date this Declaration is recorded; provided, however, that the Owners of Units to which two-thirds of the votes in the Association appertain, exclusive of any vote or votes appurtenant to Units then owned by Declarant, may consent to the extension of such option by vote taken not more than one (1) year prior to the date upon which such option will expire. Notwithstanding the above, Declarant reserves the right to terminate this option at any time prior to the expiration of the ten (10) year period.

(b) The legal description of the Additional Property as of the date hereof is set forth in Exhibit "B". The description of the Additional Property may be amended by the Declarant within its sole discretion. Portions of the Additional Property (together with additions thereto made in accordance herewith) may be added at different times, and there are no limitations fixing the boundaries of those portions or regulating the order in which any such portions may become part of the Property.

(c) All Units created on portions of the Additional Property which are added to the

Property will be restricted exclusively to residential purposes, in accordance with Article VI of this Declaration, unless otherwise used as Common Property.

(d) The option reserved by Article X, Section 10.01 of this Article may be exercised by the Declarant alone (without the consent of the Association or any Owner) by the execution by the Declarant of an amendment to this Declaration which shall be filed for record in the Office of the Clerk of the Superior Court of that county in which the Property is located. Any such amendment shall expressly submit that portion of the Additional Property which is to become part of the Property, and upon the exercise, if any, of such option, the provisions of this Declaration shall be understood and construed as embracing all of the Property, including the initial phase and such portions of the Additional Property as have become a part of the Property by annexation.

(e) In addition to the procedure outlined in subparagraph (d) above, the option reserved by Article X, Section 10.01 of this Article may be exercised with respect to any portions of the Additional Property, notwithstanding that such Additional Property may be owned by persons, including any individual, individuals, corporations, partnerships or any other type of entity, other than Declarant. Declarant shall exercise this option by an amendment to this Declaration which shall be filed for record in the Office of the Clerk of the Superior Court of the county in which the property lies, together with a plat of that portion of the Additional Property which is to become part of the Property by reason of such amendment. Such plat shall indicate the boundaries of that portion of the Additional Property which is to become part of the Property, the boundaries of all Units to be located thereon, and an identifying number for each such Unit. Any such amendment shall contain a statement consenting to the annexation of any such Additional Property, together with a reference to a Declaration, (citing the specific Deed Book and Page in which such Declaration is recorded) executed by the owner or owners thereof submitting such Additional Property to this Declaration. Upon the exercise of the foregoing procedure, the provisions of this Declaration shall be understood and construed as embracing all of the Property, including the initial phase and such portions of the Additional Property as have become part of the Property by annexation in this manner.

(f) Any provision of this Declaration to the contrary notwithstanding the provisions of this Article may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the prior written consent of Declarant.

10.03 Effect of Annexation.

(a) From and after the date of annexation of any portion of the Additional Property, each Unit so added to the Property and the Owners thereof, shall have the same vote, shall share the same obligations and responsibilities, and shall have the same rights and privileges accorded every other Unit previously comprising part of the Property. Upon annexation of each portion of the Property, as herein provided, the Association shall be deemed to have assumed, automatically, and without the necessity of consent by the Association, the Board or any individual Owners, the covenants to maintain the common Property and the other obligations imposed by this Declaration, as amended from time

to time, with respect to that portion of the Additional Property which is then the subject of annexation.

(b) Each Owner by acceptance of a deed to a Unit in the Property, and the Association, shall be deemed to have approved annexation in the manner provided in this Article X.

10.04 Proposed or Future Development of Additional Property. Notwithstanding any other provision contained in this Declaration, or any language contained upon any plat of survey of the Development, Declarant is under no obligation to submit any portion of the Additional Property to the Declaration, or to develop any portion of the Additional Property, regardless of whether it has been annexed in accordance with this Article. Any references to "proposed" or "future" development are for the Declarant's reference only, and any portion of the Additional Property may be developed by Declarant as Declarant in its sole discretion sees fit.

ARTICLE XI LEASES

11.1 Purposes. In order to protect the equity of the individual Unit Owners, to carry out the purpose for which the Community was formed by preserving the character of the Community as a homogenous, adult, residential community of predominantly owner-occupied homes and by preventing the Community from assuming the character of a renter-occupied neighborhood, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially owner-occupied, and in order to comply with zoning requirements leasing of Units shall be governed by the restrictions imposed by this Article. The Board of Directors shall have authority to make and enforce reasonable rules and regulations in order to enforce this Article.

11.2 Definitions.

(a) Leasing means regular, exclusive occupancy of a Unit by any person(s) other than the Owner for which the Owner received any consideration or benefit, including, but not limited to, a fee, rent or gratuity. For purposes hereof the following shall not constitute leasing: (i) occupancy by a roommate of an Owner Occupant; (ii) occupancy by a member of the Owner's family, (iii) occupancy by one or more wards if the Unit is owned by their legal guardian, or (iv) occupancy by one or more beneficiaries of a trust if the Unit is owned in trust by the trustee.

(b) Open Leasing Status. Any Unit that is designated as being in "Open Leasing Status" shall authorize a Unit to be leased at any time. A Unit designated as being in Open Leasing Status shall remain in Open Leasing Status until such time as title to the Unit is conveyed or transferred to another person or entity, after which conveyance the Unit shall be converted to Restricted Leasing Status regardless of the continued occupancy by the same lessee unless the new Owner requests that the Unit remain in Open Leasing Status within ninety (90) days of said conveyance. Open Leasing Status may be temporarily conferred upon a Unit as provided hereinafter or may be applied for as provided below. Notwithstanding anything to the contrary herein, any Unit in Open

Leasing Status shall automatically be converted to Restricted Leasing Status if the Unit is not subject to a lease for ninety (90) or more consecutive days.

(c) Restricted Leasing Status. Any Unit that is designated as being in "Restricted Leasing Status" shall prohibit a Unit Owner from leasing his or her Unit except as may be provided below. All Units shall be in Restricted Leasing Status unless converted to Open Leasing Status as provided in this Section.

11.3 Undue Hardship. Notwithstanding the provisions above, the Board shall be empowered to allow reasonable leasing of a Unit upon application in accordance with this Paragraph to avoid undue hardship, including, but not limited to the following situations; (1) a Unit Owner must relocate his residence outside the greater Atlanta metropolitan area and cannot, within nine (9) months from the date that the Unit was placed on the market, sell the Unit except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) the Owner is deceased and the Unit is being administered by a personal representative; or (3) the Owner takes a leave of absence from employment or temporarily relocates for employment purposes and intends to return to reside in the Unit, in which case the Unit Owner must reapply every year for renewal of the hardship exception. Those Owners who have complied with this section, have demonstrated that the inability to lease their Unit would result in undue hardship, and have obtained the requisite written Board approval may lease their Units for such duration as the Board reasonably determines is necessary to prevent undue hardship.

Any Owner who believes that he or she must lease his or her Unit to avoid undue hardship shall submit a written application to the Board of Directors setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board of Directors may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board of Director's written approval of the Owner's application. When an application is approved, the Owner shall provide the Board of Directors with the name and phone number of the lessee and the Owner's address other than at the Unit and other such information as the Board of Directors may reasonably require within ten (10) days after a lease has been signed by both parties.

11.4 Leasing Provisions. Such Units as are permitted to be leased may be leased only in their entirety; no fraction or portion may be leased. With the exception of a lender in possession of a Unit following a default in a first Mortgage, a foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease his Unit for transient or hotel purposes. All leases shall be in writing in a form approved by the Board of Directors prior to the effective date of the lease. The Board of Directors shall maintain in its files and, upon request, shall provide to any Owner a form which is deemed acceptable. There shall be no subleasing or assignment of leases. All leases must be for an initial term of at least one (1) year, except with written approval by the Board of Directors, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board of Directors with a copy of the lease and the name of the lessee and all other people occupying the Unit, the phone number of the lessee and the Owner's address other than at the Unit and other such information as the Board of Directors may reasonably require within ten (10) days after a lease has been signed by both parties. The

Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations and the lease form shall provide that the Owner has made available to the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board of Director's approval or disapproval shall be limited to the form of the proposed lease.

(a) Notice. At least seven (7) days prior to entering into the lease of a Unit, the Owner shall provide the Board of Directors with a copy of the proposed lease agreement. The Board of Directors shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board of Directors shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

(b) Liability for Assessments, Use of Common Property, and Compliance with Declaration, Bylaws, and Rules and Regulations. Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(1) Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee shall abide and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure such compliance. Owner agrees to cause all Occupants of his or her Unit to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto and is responsible for all violations caused by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. In the event that the lessee or a person living with the lessee violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the Owner. Unpaid fines shall constitute a lien against the Unit. Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law.

(2) Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property.

(3) Liability for Assessments. When an Owner who is leasing his or her Unit fails to pay any general or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period

of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid general and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board of Director's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board of Director's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

11.5 Mortgagee and Declarant Exemption. The provisions of this Article shall not apply to either the Declarant, or to any Mortgagee in possession of a Unit through foreclosure or otherwise as a result of the exercise of any rights arising out of a first priority Mortgage in a Unit.

11.6 Rights Reserved by Declarant. Notwithstanding the restriction on the leasing of Units as described herein, Declarant may grant an Owner to lease a Unit for any reason and the extent and duration of said privilege granted by Declarant shall be determined solely by Declarant. Any ability to lease a Unit granted by Declarant which extends beyond the termination of Declarant's rights under this Declaration shall be valid and may not be terminated by the Association so long as the Owner complies with the terms and conditions imposed by Declarant.

ARTICLE XII MISCELLANEOUS

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

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

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

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

12.05 Notices. All notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether by the Declarant, the Association, the ACC, the Owner, or any other person, shall be in writing. Unless specified otherwise herein, all such writings shall be delivered, in the Board's sole discretion, either by first class (regular) mail, federal express, overnight delivery service for next day delivery, courier, or certified or registered mail, return receipt requested with any expenses prepaid to the following addresses:

- (a) Declarant: c/o Cobb, Olson & Andrle LLC
500 Sugar Mill Road, Ste. 160-B
Atlanta, GA 30350
- (b) Owners: Each Owner's address as registered with the Association in accordance with the By-Laws

Any written communication transmitted on behalf of or by the Board or the Association, shall be deemed received on the second business day after the writing was sent.

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

12.07 Environmental and Transportation Studies and/or Assessments. Each owner, by acceptance of a deed conveying a Unit, acknowledges that certain environmental and transportation studies and/or assessments may be available for review prior to acceptance of such deed. The studies and/or assessments may be on file at the sales office located on the Property and/or the offices of the applicable governing authority. Declarant has made no further investigation pertaining to environmental and/or transportation issues affecting the Property and makes no warranties and representations in regard to the aforesaid studies and/or assessments or any and all issues related thereto.

12.08 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.

12.09 Preparer. This Declaration was prepared by Frank R. Olson, Cobb, Olson & Andrle LLC, 500 Sugar Mill Road, Suite 160-B, Atlanta, GA 30350.

12.10 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.

12.11 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; provided, 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 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 taken by the Declarant, the Association or an Owner 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.

12.12 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 of the Association. 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.

12.13 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.

12.14 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.

12.15 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least 75% of the Total Association Vote and the consent Declarant. This Section shall not apply to (a) actions brought by the Association

to enforce the provisions of this Declaration (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.

12.16 Declarant's Interest. Regardless of whether Declarant owns any portion of the Property it is acknowledged by all Owners that Declarant either indirectly or directly benefits by maintaining its status as Declarant. By any Owners acceptance of the deed to Owner's Unit(s) Owner acknowledges and agrees that so long as Declarant has not transferred Declarant rights and obligations to the Association Declarant shall be deemed to have a valuable equitable interest in the Property along with other interest that any Owner shall be estopped from challenging.

12.17. Acknowledgment of Proximity. Each Owner, by acceptance of a deed to a Unit, thereby acknowledges and accepts that the Property is located in an area adjacent to an automotive repair and sales facility, and shall have no cause of action against the Association or the Declarant for the existence of that condition.

ARTICLE XIII MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first mortgages on Units in the Community. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

13.01 Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, 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, which 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 an Owner of a Unit of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;
- (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible mortgagees.

13.02 Right to Records. Upon written request in accordance with Article XII, Section 12.01, all eligible holders shall:

- (a) be entitled to attend and observe all meetings of Owners, but not meetings of the Board;
- (b) be furnished with copies of annual financial reports made to the Owners; and
- (c) be entitled to inspect the financial books and records of the Association during reasonable business hours.

13.03 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 ("Fannie Mae"), the U.S. Department of Veterans Affairs ("VA"), and the U.S. Department of Housing and Urban Development ("HUD"), 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, 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 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 Jaws, 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.

13.04 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 the Unit and all improvements thereon and a liability policy covering damage or injury occurring in a Unit. 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.

13.05 Damage and Destruction - Insured by Association. Promptly 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 a reasonable time after the casualty, a proposal not to repair or reconstruct such property is approved at an Association meeting by a majority of the Members and the Declarant. 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 Common Property shall thereafter be maintained by the Association in a neat and attractive condition.

13.06 Damage and Destruction -- Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement in a Unit shall be repaired by the Owner thereof within 75 days after such damage or destruction or, if such repairs cannot be completed within 75 days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish alt improvements on the Unit and remove all debris therefrom within 75 days after such damage or destruction. Thereafter Owner shall maintain the Unit in a manner consistent with the Community-Wide Standard.

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

13.08 Professional Management. Any agreement for professional management of the Association, or any other contract providing services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee of ninety (90) days written notice.

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

Residence.

13.10 Amendment by Board. Should the Veterans' Administration, the Federal Housing Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which may have necessitated the provisions of this Article or make such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

13.11 Failure of Mortgagee to Respond. Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

13.12 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first Mortgagees or Owners give their consent, the Association shall not:

- (a) By act or omission, directly or indirectly, seek to abandon, partition, subdivide, encumber, sell, or transfer any real property owned by the Association (other than personal property). The granting of easements for public utilities or other similar purposes consistent with the intended use of the real property, if any, owned by the Association shall not be deemed a transfer within the meaning of this subsection;
- (b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;
- (c) By act or omission change, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of any real property owned by the Association (the issuance and amendment or architectural standards, procedures, rules and regulations or use restrictions shall not constitute a change, waiver or abandonment within the meaning of this subsection);
- (d) Fail to maintain insurance, as required by this Declaration; or
- (e) Use hazard insurance proceeds received in connection with losses to any real property owned by the Association (other than personal property) for other than the repair, replacement or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the real property owned by the Association and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payment shall be entitled to immediate reimbursement from the Association.

13.13 HUD and/or VA Approvals. Provided the Declarant has not relinquished the right to appoint and remove members of the Board, is in existence and provided further that prior written approval has been issued by the Veterans Administration and/or The Department of Housing and Urban Community for the Property, as this term is defined in the Declaration, and/or portions thereof, then the following events shall require the prior approval of The Veterans Administration and/or The Department of Housing and Urban Development:

- (a) Mortgaging of common area; and
- (b) Dissolution and amendment of the Articles of Incorporation of Berkley Township Property Owners Association, Inc. and/or By-Laws.

13.14 Gwinnett County Board of Commissioners Approval. In addition to the requirements of the Georgia Non Profit Corporation Code, the Articles of Incorporation of the Association and the Bylaws of the Association, the Association may not be dissolved without the prior written consent of the Gwinnett County Board of Commissioners.

13.15 Property Taxes. The Association shall pay all real estate ad valorem taxes for all property which is owned by the Association.

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IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed this 22 day of October, 2019.

DECLARANT:

BERKLEY TOWNSHIP, LLC

By: 
Its: Member

Signed, sealed and delivered in
the presence of:

Christina Dawson

Unofficial Witness

Sworn to and subscribed before
me, this 22 day of October, 2019.

Robin Tammy Evans
Notary Public

My commission expires: 4/15/22

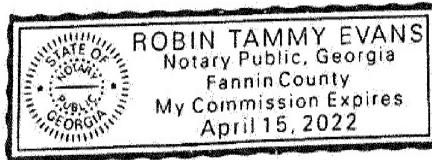


EXHIBIT "A"
LEGAL DESCRIPTION

Tract I

ALL THAT TRACT or parcel of land lying and being in Land Units 238 and 259 of the 6th District, Gwinnett County, Georgia, and being shown as Tract 1 (containing 27.653 acres) and Tract 2 (containing 11.425 acres) (total of 39.078 acres) per that certain ALT A/NSPS Land Title Boundary Survey for Parkland Communities, Inc., First American Title Insurance Company and Attorney Certified Land Title, L.L.C. prepared by Barton Surveying Inc., David Barton., Georgia RLS #2533, dated 12/04/2017, and being more particularly described as follows:

BEGINNING at an iron pin set on the southeasterly right of way of Buford Highway (right of way varies); said point being 1150 feet northeasterly, as measured along said right of way, from the intersection of said right of way and the west line of Land Unit 259; thence continuing along said right of way of Buford Highway N49°08'27"E a distance of 100.25 feet to an iron pin set; thence leaving said right of way of Buford Highway S35°00'34"E a distance of 204.85 feet to an iron pin set; thence S29°1 1 '3 1" a distance of 3611.99 feet to an iron pin set; thence S61 °52'15"W a distance of 319.47 feet to an iron pin set; thence S60° 16'22 "W a distance of 3 79. 96 feet to a 1 inch open top found; thence N29°46'44"W a distance of 1409.47 feet to a nail set; thence N89°30'10"E a distance of 440.45 feet to an iron pin set; thence N29°34'38"W a distance of 2343.07 feet to an iron pin found; thence N50°26'37"E a distance of 98.55 feet to an iron pin found; thence N48°36'59"E a distance of 154. 96 feet to an iron pin found; thence N36°00'41 "W a distance of 203.19 feet to the POINT OF BEGINNING. Said tract contains 1,702,238 square feet or 39.078 acres.

Together with ingress-egress and utility easements as contained in Limited Warranty Deed from MMA Buford, LLC, a Georgia limited liability company, successor by name change to JDN Properties, LLC, a Georgia limited liability company to Jefferson Real Estate Properties, LLC, a Georgia limited liability company, dated 12/9/2004, filed 1/10/2005 and recorded in Deed Book 41364, Page 266, aforesaid records.

Tract II – Detention Pond

TOGETHER WITH all that tract or parcel of land lying and being

in Land Lot 259, 6th District, Gwinnett County, Georgia, commonly known as the "Berkley Township Detention Pond" and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at a 1/2 inch rebar set on the southeasterly right of way of Buford Highway (right of way varies), said point being the northwest corner of Lot 1 of Woodbine Station, Unit One, per plat book 63, page 3; thence continuing along said right of way of Buford Highway S 49°08'27"W a distance of 4.03 feet to a point; thence leaving said right of way of Buford Highway, along a curve to the left for an arc distance of 17.19 feet, said curve having a radius of 22.00 feet and being subtended by a chord of S 18°18'21"E 16.75 feet to a point; thence S 40°41'18"E a distance of 26.78 feet to a point; thence along a curve to the right for an arc distance of 125.41 feet, said curve having a radius of 625.00 feet and being subtended by a chord of S 34°56'25"E 125.20 feet to a point; thence S 29°11'31"E a distance of 268.27 feet to a point; thence S 44°14'30"W a distance of 93.30 feet to a point; thence along a curve to the right for an arc distance of 35.30 feet, said curve having a radius of 125.00 feet and being subtended by a chord of S 52°19'55"W 35.18 feet to a point; thence S60°25'20"W a distance of 30.67 feet to a point; thence along a curve to the left for an arc distance of 11.00 feet, said curve having a radius of 7.00 feet and being subtended by a chord of S 15°25'20"W 9.90 feet to a point; thence S 29°34'40"E a distance of 24.21 feet to a point; thence along a curve to the left for an arc distance of 56.69 feet, said curve having a radius of 275.00 feet and being subtended by a chord of S 35°29'02"E 56.59 feet to a point; thence S 41°23'23"E a distance of 351.47 feet to the POINT OF BEGINNING; thence N68°52'58"E a distance of 34.35 feet to a point; thence S04°36'35"E a distance of 203.56 feet to a point; thence S60°24'32"W a distance of 36.30 feet to a point; thence N29°35'28"W a distance of 64.56 feet to a point; thence N29°34'40"W a distance of 43.68 feet to a point; thence along a curve to the right, following the curvature thereof for an arc distance of 97.83 feet, said curve having a radius of 75.00 feet and being subtended by a chord of N07°47'26"E 91.04 feet to a point; thence N45°09'33"E a distance of 34.22 feet to the POINT OF BEGINNING. Said tract contains 13,471 square feet or 0.309 acre.

Tract III – Amenity Area

TOGETHER WITH all that tract or parcel of land lying and being in Land Lot 259, 6th District, Gwinnett County, Georgia, commonly known as the "Berkley Township Amenity Area" and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at a 1/2 inch rebar set on the southeasterly right of way of Buford Highway (right of way varies), said point being the northwest corner of Lot 1 of Woodbine Station, Unit One, per plat book 63, page 3; thence continuing along said right of way of Buford Highway S49°08'27"W a distance of 80.41 feet a point; thence leaving said right of way of Buford Highway S85°46'25"E a distance of 28.24 feet to a point; thence S40°41'18"E a distance of 22.10 feet to a point; thence along a curve to the right, following the curvature thereof for an arc distance of 115.37 feet, said curve having a radius of 575.00 feet and being subtended by a chord of S34°56'25"E 115.18 feet to a point; thence S29°11'31"E a distance of 59.90 feet to the POINT OF BEGINNG; thence S29°11'31"E a distance of 115.16 feet to a point; thence along a curve to the right, following the curvature thereof for an arc distance of 117.30 feet, said curve having a radius of 75.00 feet and being subtended by a chord of S15°36'54"W 105.71 feet to a point; thence S60°25'20"W a distance of 30.74 feet to a point; thence along a curve to the right, following the curvature thereof for an arc distance of 11.00 feet, said curve having a radius of 7.00 feet and being subtended by a chord of N74°34'40"W 9.90 feet to a point; thence N29°34'40"W a distance of 116.84 feet to a point; thence S74°31'32"W a distance of 46.24 feet to a point; thence N03°19'49"W a distance of 11.19 feet to a point; thence along a curve to the right, following the curvature thereof for an arc distance of 24.36 feet, said curve having a radius of 27.25 feet and being subtended by a chord of N22°17'03"E 23.56 feet to a point; thence N47°53'56"E a distance of 138.17 feet the POINT OF BEGINNING. Said tract contains 19,993 square feet or 0.459 acre.

Tract IV - Open Space "A"

All that tract or parcel of land lying and being in Land Lot 259, 6th District, Gwinnett County, Georgia, and being more particularly described as follows:

BEGINNING at a 1/2 inch rebar set on the southeasterly right of way of Buford Highway (right of way varies), said point being the northwest corner of Lot 1 of Woodbine Station, Unit One, per plat book 63, page 3; thence leaving said right of way S35°00'34"E a distance of 204.85 feet to a 1/2 inch rebar set; thence S29°11'31"E distance of 322.43 feet to a point; thence S44°14'30"W distance of 17.54 feet to a point; thence N45°45'30"W distance of 89.00 feet to a point; thence N44°14'30"E distance of 33.58 feet to a point; thence N29°11'31"W distance of 268.27 feet to a point; thence along a

curve to the left, following the curvature thereof for an arc distance of 125.41 feet, said curve having a radius of 625.00 feet and being subtended by a chord of N34°56'25"W 125.20 feet to a point; thence N40°41'18"W distance of 26.78 feet to a point; thence along a curve to the right, following the curvature thereof for an arc distance of 17.19 feet, said curve having a radius of 22.00 feet and being subtended by a chord of N18°18'21"W 16.75 feet to a point on the southeasterly right of way of Buford Highway; thence continuing along said right of way N49°08'27"E a distance of 4.03 feet to the POINT OF BEGINNING. Said tract contains 6,186 square feet or 0.142 acre.

Tract V - Open Space "B"

All that tract or parcel of land lying and being in Land Lot 259, 6th District, Gwinnett County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at a 1/2 inch rebar set on the southeasterly right of way of Buford Highway (right of way varies), said point being the northwest corner of Lot 1 of Woodbine Station, Unit One, per plat book 63, page 3; thence continuing along said right of way of Buford Highway S 49°08'27"W a distance of 4.03 feet to a point; thence leaving said right of way of Buford Highway, along a curve to the left for an arc distance of 17.19 feet, said curve having a radius of 22.00 feet and being subtended by a chord of S 18°18'21"E 16.75 feet to a point; thence S 40°41'18"E a distance of 26.78 feet to a point; thence along a curve to the right for an arc distance of 125.41 feet, said curve having a radius of 625.00 feet and being subtended by a chord of S 34°56'25"E 125.20 feet to a point; thence S 29°11'31"E a distance of 268.27 feet to a point; thence S 44°14'30"W a distance of 93.30 feet to a point; thence along a curve to the right for an arc distance of 35.30 feet, said curve having a radius of 125.00 feet and being subtended by a chord of S 52°19'55"W 35.18 feet to a point; thence S 60°25'20"W a distance of 30.67 feet to a point; thence along a curve to the left for an arc distance of 11.00 feet, said curve having a radius of 7.00 feet and being subtended by a chord of S 15°25'20"W 9.90 feet to a point; thence S 29°34'40"E a distance of 24.21 feet to a point; thence along a curve to the left for an arc distance of 56.69 feet, said curve having a radius of 275.00 feet and being subtended by a chord of S 35°29'02"E 56.59 feet to a point; thence S 41°23'23"E a distance of 18.84 feet to the POINT OF BEGINNING; thence N44°14'30"E a distance of 33.18 feet to a point; thence S49°00'35"E a distance of 15.58 feet to a point; thence S40°59'25"W a distance of 24.27 feet to a point; thence S45°12'16"E

a distance of 62.49 feet to a point; thence S $63^{\circ}43'20''$ E a distance of 23.64 feet to a point; thence N $78^{\circ}41'46''$ E a distance of 10.42 feet to a point; thence N $47^{\circ}13'46''$ E a distance of 32.70 feet to a point; thence N $81^{\circ}58'56''$ E a distance of 12.45 feet to a point; thence S $55^{\circ}21'14''$ E a distance of 25.15 feet to a point; thence S $36^{\circ}46'03''$ E a distance of 25.17 feet to a point; thence S $01^{\circ}35'24''$ W a distance of 18.39 feet to a point; thence S $29^{\circ}40'24''$ W a distance of 21.15 feet to a point; thence S $43^{\circ}53'20''$ W a distance of 18.42 feet to a point; thence S $40^{\circ}49'24''$ W a distance of 29.76 feet to a point; thence N $41^{\circ}23'23''$ W a distance of 186.99 feet to the POINT OF BEGINNING. Said tract contains 7,903 square feet or 0.181 acre.

Tract VI - Open Space "C"

All that tract or parcel of land lying and being in Land Lot 259, 6th District, Gwinnett County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at a 1/2 inch rebar set on the southeasterly right of way of Buford Highway (right of way varies), said point being the northwest corner of Lot 1 of Woodbine Station, Unit One, per plat book 63, page 3; thence continuing along said right of way of Buford Highway S $49^{\circ}08'27''$ W a distance of 4.03 feet to a point; thence leaving said right of way of Buford Highway, along a curve to the left for an arc distance of 17.19 feet, said curve having a radius of 22.00 feet and being subtended by a chord of S $18^{\circ}18'21''$ E 16.75 feet to a point; thence S $40^{\circ}41'18''$ E a distance of 26.78 feet to a point; thence along a curve to the right for an arc distance of 125.41 feet, said curve having a radius of 625.00 feet and being subtended by a chord of S $34^{\circ}56'25''$ E 125.20 feet to a point; thence S $29^{\circ}11'31''$ E a distance of 268.27 feet to a point; thence S $44^{\circ}14'30''$ W a distance of 93.30 feet to a point; thence along a curve to the right for an arc distance of 35.30 feet, said curve having a radius of 125.00 feet and being subtended by a chord of S $52^{\circ}19'55''$ W 35.18 feet to a point; thence S $60^{\circ}25'20''$ W a distance of 30.67 feet to a point; thence along a curve to the left for an arc distance of 11.00 feet, said curve having a radius of 7.00 feet and being subtended by a chord of S $15^{\circ}25'20''$ W 9.90 feet to a point; thence S $29^{\circ}34'40''$ E a distance of 24.21 feet to a point; thence along a curve to the left for an arc distance of 56.69 feet, said curve having a radius of 275.00 feet and being subtended by a chord of S $35^{\circ}29'02''$ E 56.59 feet to a point; thence S $41^{\circ}23'23''$ E a distance of 276.69 feet to the POINT OF BEGINNING; thence N $46^{\circ}13'38''$ E a distance of 30.30 feet to a point; thence N $63^{\circ}58'23''$ E a distance of 9.76 feet to a point; thence S $59^{\circ}30'05''$ E a distance of 57.14 feet to a point; thence S $23^{\circ}58'56''$ E

a distance of 20.00 feet to a point; thence S $16^{\circ}44'57''$ W a distance of 22.66 feet to a point; thence S $68^{\circ}52'58''$ W a distance of 34.35 feet to a point; thence N $41^{\circ}23'23''$ W a distance of 74.78 feet to the POINT OF BEGINNING. Said tract contains 4,057 square feet or 0.093 acre.

Tract VII - Open Space "D"

All that tract or parcel of land lying and being in Land Lot 259, 6th District, Gwinnett County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at a 1/2 inch rebar set on the southeasterly right of way of Buford Highway (right of way varies), said point being the northwest corner of Lot 1 of Woodbine Station, Unit One, per plat book 63, page 3; thence leaving said right of way of Buford Highway S $35^{\circ}00'34''$ E a distance of 204.85 feet to a 1/2 inch rebar set; thence S $29^{\circ}11'31''$ E a distance of 1,094.28 feet to a point; thence S $60^{\circ}48'29''$ W a distance of 131.75 feet to the POINT OF BEGINNING; thence S $60^{\circ}48'29''$ W a distance of 18.03 feet to a point; thence N $59^{\circ}08'21''$ W a distance of 28.34 feet to a point; thence along a curve to the right, following the curvature thereof for an arc distance of 51.59 feet, said curve having a radius of 100.00 feet and being subtended by a chord of N $44^{\circ}21'31''$ W 51.02 feet to a point; thence N $29^{\circ}34'40''$ W a distance of 47.87 feet to a point; thence N $29^{\circ}35'28''$ W a distance of 86.83 feet to a point; thence N $60^{\circ}24'32''$ E a distance of 36.30 feet to a point; thence N $81^{\circ}49'12''$ E a distance of 26.70 feet to a point; thence S $29^{\circ}34'35''$ E a distance of 20.00 feet to a point; thence S $60^{\circ}25'25''$ W a distance of 9.91 feet to a point; thence S $59^{\circ}20'16''$ W a distance of 24.47 feet to a point; thence S $25^{\circ}19'47''$ E a distance of 120.33 feet to a point; thence S $54^{\circ}26'25''$ E a distance of 64.60 to the POINT OF BEGINNING. Said tract contains 5,531 square feet or 0.127 acre.

Tract VIII - Open Space "E"

All that tract or parcel of land lying and being in Land Lot 259, 6th District, Gwinnett County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at a 1/2 inch rebar set on the southeasterly right of way of Buford Highway (right of way varies), said point being the northwest corner of Lot 1 of Woodbine Station, Unit One, per plat book 63, page 3; thence continuing along said right of way of Buford Highway S

49°08'27"W a distance of 100.25 feet to a 1/2 inch rebar set; thence leaving said right of way S36°00'41"E a distance of 203.19 feet to a 1/2 inch rebar found; thence S48°36'59"W a distance of 154.96 feet to a 1/2 inch rebar found; thence S50°26'37"W a distance of 98.55 feet to a 1/2 inch rebar found; thence S29°34'38"E a distance of 633.89 feet to the POINT OF BEGINNING; thence N66°41'05"E a distance of 26.09 feet to a point; thence N45°25'17"E a distance of 81.68 feet to a point; thence S85°44'46"E a distance of 35.40 feet to a point; thence along a curve to the left, following the curvature thereof for an arc distance of 17.85 feet, said curve having a radius of 125.00 feet and being subtended by a chord of S02°59'46"W 17.84 feet to a point; thence S60°25'20"W a distance of 109.63 feet to a point; thence S29°34'40"E a distance of 155.90 feet to a point; thence N60°25'20"E a distance of 94.51 feet to a point; thence S29°35'28"E a distance of 21.01 feet to a point; thence S60°27'06"W a distance of 94.52 feet to a point; thence S29°34'40"E a distance of 182.05 feet to a point; thence N60°25'20"E a distance of 105.52 feet to a point; thence along a curve to the left, following the curvature thereof for an arc distance of 19.62 feet, said curve having a radius of 150.00 feet and being subtended by a chord of S55°23'31"E 19.61 feet to a point; thence S59°08'21"E a distance of 28.34 feet to a point; thence S60°25'20"W a distance of 143.04 feet to a point; thence N29°34'38"W a distance of 417.65 feet to the POINT OF BEGINNING. Said tract contains 15,871 square feet or 0.364 acre.

Tract IX - Open Space "F"

All that tract or parcel of land lying and being in Land Lot 259, 6th District, Gwinnett County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at a 1/2 inch rebar set on the southeasterly right of way of Buford Highway (right of way varies), said point being the northwest corner of Lot 1 of Woodbine Station, Unit One, per plat book 63, page 3; thence continuing along said right of way of Buford Highway S49°08'27"W a distance of 80.41 feet to the POINT OF BEGINNING; thence leaving said right of way of Buford Highway S85°46'25"E a distance of 28.24 feet to a point; thence S40°41'18"E a distance of 22.10 feet to a point; thence along a curve to the right, following the curvature thereof for an arc distance of 115.37 feet, said curve having a radius of 575.00 feet and being subtended by a chord of S34°56'25"E 115.18 feet to a point; thence S29°11'31"E a distance of 59.90 feet to a point; thence S47°53'56"W a distance of 138.17 feet to a point; thence along a curve to the left, following the curvature thereof for an arc distance of 24.36 feet, said curve having

a radius of 27.25 feet and being subtended by a chord of S $22^{\circ}17'03''W$ 23.56 feet to a point; thence S $03^{\circ}19'49''E$ a distance of 11.19 feet to a point; thence along a curve to the left, following the curvature thereof for an arc distance of 11.97 feet, said curve having a radius of 50.00 feet and being subtended by a chord of S $10^{\circ}11'25''E$ 11.94 feet to a point; thence S $60^{\circ}25'20''W$ a distance of 91.19 feet to a point; thence S $29^{\circ}34'40''E$ a distance of 130.15 feet to a point; thence N $60^{\circ}19'32''E$ a distance of 90.00 feet to a point; thence S $29^{\circ}34'40''E$ a distance of 21.00 feet to a point; thence S $60^{\circ}25'20''W$ a distance of 90.07 feet to a point; thence S $29^{\circ}23'15''E$ a distance of 130.00 feet to a point; thence N $60^{\circ}25'20''E$ a distance of 99.35 feet to a point; thence S $41^{\circ}23'23''E$ a distance of 245.64 feet to a point; thence N $47^{\circ}03'31''W$ a distance of 66.20 feet to a point; thence N $41^{\circ}27'28''W$ a distance of 155.72 feet to a point; thence S $62^{\circ}31'41''W$ a distance of 102.74 feet to a point; thence N $62^{\circ}24'47''W$ a distance of 45.23 feet to a point; thence N $29^{\circ}34'38''W$ a distance of 287.35 feet to a 1/2 inch rebar found; thence N $50^{\circ}26'37''E$ a distance of 98.55 feet to a 1/2 inch rebar found; thence N $48^{\circ}36'59''E$ a distance of 154.96 feet to a 1/2 inch rebar found; thence N $36^{\circ}00'41''W$ a distance of 203.19 feet to a 1/2 inch rebar set on the southeasterly right of way of Buford Highway; thence continuing along said right of way N $49^{\circ}08'27''E$ a distance of 19.84 feet the POINT OF BEGINNING. Said tract contains 29,092 square feet or 0.668 acre.

Tract X - Rec. Area "A"

TOGETHER WITH all that tract or parcel of land lying and being in Land Lot 259, 6th District, Gwinnett County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at a 1/2 inch rebar set on the southeasterly right of way of Buford Highway (right of way varies), said point being the northwest corner of Lot 1 of Woodbine Station, Unit One, per plat book 63, page 3; thence leaving said right of way S $35^{\circ}00'34''E$ a distance of 204.85 feet to a 1/2 inch rebar set; thence S $29^{\circ}11'31''E$ a distance of 322.43 feet to the POINT OF BEGINNING; thence S $29^{\circ}11'31''E$ a distance of 771.85 feet to a point; thence S $60^{\circ}48'29''W$ a distance of 131.75 feet to a point; thence N $54^{\circ}26'25''W$ a distance of 64.60 feet to a point; thence N $25^{\circ}19'47''W$ a distance of 120.33 feet to a point; thence N $59^{\circ}20'16''E$ a distance of 24.47 feet to a point; thence N $60^{\circ}25'25''E$ a distance of 9.91 feet to a point; thence N $29^{\circ}34'35''W$ a distance of 20.00 feet to a point; thence S $81^{\circ}49'12''W$ a distance of 26.70 feet to a point; thence N $04^{\circ}36'35''W$ a distance of 203.56 feet to a point; thence N $16^{\circ}44'57''E$ a distance of 22.66 feet to a point; thence

N23°58'56"W a distance of 20.00 feet to a point; thence N59°30'05"W a distance of 57.14 feet to a point; thence S63°58'23"W a distance of 9.76 feet to a point; thence S46°13'38"W a distance of 30.30 feet to a point; thence N41°23'23"W a distance of 70.86 feet to a point; thence N40°49'24"E a distance of 29.76 feet to a point; thence N43°53'20"E a distance of 18.42 feet to a point; thence N29°40'24"E a distance of 21.15 feet to a point; thence N01°35'24"E a distance of 18.39 feet to a point; thence N36°46'03"W a distance of 25.17 feet to a point; thence N55°21'14"W a distance of 25.15 feet to a point; thence S81°58'56"W a distance of 12.45 feet to a point; thence S47°13'46"W a distance of 32.70 feet to a point; thence S78°41'46"W a distance of 10.42 feet to a point; thence N63°43'20"W a distance of 23.64 feet to a point; thence N45°12'16"W a distance of 62.49 feet to a point; thence N40°59'25"E a distance of 24.27 feet to a point; thence N49°00'35"W a distance of 15.58 feet to a point; thence N44°14'30"E a distance of 135.32 feet to the POINT OF BEGINNING. Said tract contains 82,603 square feet or 1.896 acres.

Map Parcel ID Nos. R6259-377, R6259-041, and R6259-368

EXHIBIT "B"
ADDITIONAL PROPERTY

Any property within five (5) miles of the Property described on Exhibit "A".

EXHIBIT "C"

BYLAWS OF BERKLEY TOWNSHIP PROPERTY OWNERS' ASSOCIATION, INC.



Prepared by:
FRANK R. OLSON, Esq.
COBB, OLSON & ANDRLE, LLC
Attorneys at Law
500 Sugar Mill Road, Suite 160-B
Atlanta, GA 30350

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1. GENERAL PROVISIONS

(a) Applicability

These Bylaws provide for the self-government of Berkley Township Property Owners' Association, Inc., in accordance with the Georgia Property Owners' Association Act ("Act"), the Articles of Incorporation filed with the Secretary of State of Georgia, and the Declaration of Covenants, Conditions, Restrictions and Easements for Berkley Township recorded in the Gwinnett County, Georgia land records ("Declaration").

(b) Name

The name of the corporation is Berkley Township Property Owners' Association, Inc. ("Association").

(c) Definitions

The terms used herein shall have their generally accepted meanings or the meanings specified in Paragraph 2 of the Declaration.

(d) Membership

An Owner of a Lot shall automatically become a member of the Association upon taking title to the Lot and shall remain a member for the entire period of ownership. An Owner's spouse may exercise any of the membership powers and privileges of the Owner. If more than one Person holds title to a Lot, the membership shall be shared in the same proportion as the title, but there shall be only one membership and one vote per Lot. Membership does not include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. Membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of the Lot. Membership may be transferred only in connection with the transfer of the Lot.

(e) Entity Members

If an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director or other designated agent of such corporation, manager or member of such limited liability company, partner of such partnership, beneficiary or other designated agent of such trust, or representative of such other legal entity shall be eligible to represent such entity in the affairs of the Association, including, without limitation, serving on the Association's Board of Directors. Such person's relationship with the Association, and any office or directorship held, shall terminate automatically upon the termination of such person's relationship with the entity that is the Owner of the Lot. Termination of the person's relationship with the Association will create a vacancy in any elected

or appointed position within the Association in which such person may have been serving and such vacancy may be filled in accordance with these Bylaws.

(f) Voting

Each Lot shall be entitled to one vote, which vote may be cast by the Owner or by a lawful proxy as provided below. When more than one Person owns a Lot, the vote for such Lot shall be exercised as they determine between or among themselves. In no event shall more than one vote be cast with respect to any Lot. If only one co-Owner or only an Owner's spouse attempts to cast the vote for a Lot, it shall be conclusively presumed that such vote is authorized for the Lot. If the co-Owners or an Owner and his or her spouse disagree about how to cast the Lot's vote, and two or more of them attempt to cast the Lot's vote, such Persons shall not be recognized and such votes shall not be counted.

If a Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge or if any Owner or Occupant of the Lot is in violation of the Association Legal Instruments and the voting rights for such Lot have been suspended, the Owner of such Lot shall not be eligible to: (1) vote, either in person or by proxy; (2) act as proxy for any other Owner; (3) issue a written ballot or written consent; (4) be elected to the Board of Directors; or (5) vote as a Director (if serving on the Board of Directors). In establishing the total number of eligible votes for a quorum, a majority, or any other purposes, such Lot shall not be counted as an eligible vote.

(g) Electronic Communications

(i) Records and Signatures

Whenever the Association Legal Instruments require that a document, record or instrument be "written" or "in writing," the requirement is deemed satisfied by an electronic record if the Board of Directors has affirmatively published regulations permitting an electronic record or document as a substitute for a written item.

Whenever these Bylaws require a signature on a document, record or instrument, an electronic signature satisfies that requirement only if: (a) the Board of Directors has affirmatively published regulations permitting an electronic signature as a substitute for a written signature; and (b) the electronic signature is easily recognizable as a secure electronic signature which is capable of verification, under the sole control of the signatory, and attached to the electronic document in such a way that the document cannot be modified without invalidating the signature; or (c) the Board of Directors reasonably believes that the signatory affixed the electronic signature with the intent to sign the electronic document, and that the electronic document has not been modified since the signature was affixed.

(ii) Verification and Liability for Falsification

The Board of Directors may require reasonable verification of any electronic signature, document, record or instrument. Absent or pending verification, the Board may refuse to accept any electronic signature or electronic record that, in the Board's sole discretion, is not clearly authentic. Neither the Board of Directors nor the Association shall be liable to any Owner

or any other Person for accepting or acting in reliance upon an electronic signature or electronic record that the Board reasonably believes to be authentic, or rejecting any such item which the Board reasonably believes not to be authentic. Any Owner or Person who negligently, recklessly or intentionally submits any falsified electronic record or unauthorized electronic signature shall fully indemnify the Association for actual damages, reasonable attorneys' fees actually incurred and expenses incurred as a result of such acts.

2. MEMBERSHIP MEETINGS AND ACTIONS

(a) Annual Meetings

There shall be one meeting of the Members each calendar year at such date, place, and time as the Board of Directors shall determine to receive the reports of the Board of Directors, to install any needed Directors for the ensuing year, and to transact such other business as may come before the Members. No annual membership meeting shall be set on a legal holiday.

(b) Special Meetings

Special membership meetings may be called for any purposes at any time by the Board of Directors or upon written petition of 25% of the Owners. Any such written petition by the Owners must identify the special meeting purpose on each page of the petition and must be for a purpose on which the Association membership is authorized to act under these Bylaws or the Declaration. The petition, with original signatures, must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of Owners have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special membership meeting for all lawful purposes stated in the petition, at a date, time and location selected by the President. The Secretary shall send notice of such special membership meeting in accordance with these Bylaws within 30 days of the date of delivery of the petition to the Secretary. Except as provided herein, no business may be conducted at a special membership meeting unless notice thereof is included in the meeting notice.

(c) Notice of Meetings

The Secretary shall give notice of each annual or special membership meeting to the record Owner or Owners of each Lot, or to the Lot address, at least 21 days prior to each annual membership meeting and at least seven days prior to each special membership meeting. The notice shall state the date, time and location of the meeting, and for any special meeting, the purpose of the meeting. Giving notice as provided in these Bylaws shall be considered proper service of notice.

(d) Waiver of Notice

Waiver of notice of a membership meeting shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any membership meeting, either before or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of improper notice of the date, time, and location thereof and of any specific business being conducted at such meeting, unless such Owner specifically objects to improper notice at the time the meeting is called to order or the Owner objects to improper notice

of the specific business before the business is put to a vote.

(e) Quorum

The presence, in person or by proxy at the beginning of the meeting, of Owners entitled to cast 10% of the eligible vote of the Association shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. In establishing the total number of eligible votes for a quorum, if a Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, or if the voting rights for a Lot have been suspended, that Lot shall not be counted as an eligible vote.

(f) Adjourned and Reconvened Meetings

Any membership meeting may be adjourned, to be reconvened at a later date or time, by vote of the Owners holding a majority of the vote represented at such meeting, regardless of whether a quorum is present. Any business that could have been transacted properly at the original session of the meeting may be transacted at the reconvened session. No additional notice of such reconvened session shall be required if the original session is adjourned for a period not exceeding 10 days.

(g) Proxies

Any Owner entitled to vote may do so by written proxy. To be valid, a proxy must be signed, dated, and presented to the Board of Directors at or before registration at the membership meeting for which it is to be used. The Board may accept proxies by whatever means it deems acceptable. A proxy is revoked only if: (1) the Owner giving the proxy attends the meeting in person and requests the proxy back during registration for the meeting (attendance alone does not invalidate the proxy); (2) the Owner giving the proxy signs and delivers to the Board a written statement revoking the proxy or substituting another person as proxy; or (3) before the proxy is exercised, the Board receives notice of the death or incapacity of the Owner giving the proxy. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

(h) Action Taken Without A Meeting

In the Board's discretion, any action that may be taken by the Owners at any annual or special membership meeting may be taken without a meeting by written ballot or written consent as provided below.

(i) Written Ballot

A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the vote cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the vote of approval equals or exceeds that which would be required to approve the matter at a meeting at which the total vote cast was the same as the vote cast by ballot.

All solicitations for votes by written ballot shall: (a) indicate the number of responses needed to meet the quorum requirements; (b) state the percentage of approvals necessary to approve each matter, other than election of Directors; and (c) specify the time by which such ballot must be received by the Board of Directors in order to be counted. A ballot may not be revoked. The Association shall maintain such ballots in its file for at least three years.

Except for amendments to recorded Association Legal Instruments that become effective upon recording, and except for actions that specifically set a later effective date, approval of any action taken by written ballot shall be effective upon the receipt of the affirmative vote necessary to take such action.

(ii) Written Consent

Approval by written consent shall be valid only when the affirmative written consents received equals or exceeds the vote that would be required to approve the matter at a meeting. Consents shall be filed with the minutes of the membership meetings. Except for amendments to recorded Association Legal Instruments that become effective upon recording, and except for actions that specifically set a later effective date, approval of any action taken by written consent shall be effective 10 days after sending the notice of approval described below.

(iii) Notice to Members of Approval

If an action of the Association membership is approved by written ballot or written consent, the Board of Directors shall issue notice of such approval to all Owners.

(i) Order and Conduct of Business

The President shall establish the agenda for, and preside at, and the Secretary shall keep the minutes of, all membership meetings. The Board of Directors may establish rules of conduct and the order of business for all membership meetings. When not in conflict with the Declaration, these Bylaws, the Articles of Incorporation or meeting procedures adopted by the Board of Directors, Robert's Rules of Order (latest edition) shall govern all membership meetings. The Board may order the removal of anyone attending a membership meeting who, in the opinion of the Board, disrupts the conduct of the business at such meeting.

3. BOARD OF DIRECTORS

(a) Composition and Selection

(i) Number and Eligibility

A Board of Directors composed of three (3) persons shall govern the affairs of the Association. The Directors shall be Owners or spouses of Owners. If, at the time of an election, a Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, or the voting rights for a Lot have been suspended, no person representing such Lot shall be eligible for election to the Board.

(ii) Term of Office

Those Directors serving on the Effective Date of these Bylaws shall remain in office until the first annual meeting after the Effective Date hereof. Successor Directors shall be elected as provided herein. At the first annual membership meeting following the Effective Date, the terms of successor Directors shall on a one year basis. Each of the **three nominees** receiving the highest number of votes shall be elected for a one-year term. At the expiration of the term of office of each member of the Board of Directors a successor shall be elected to serve for a term of one year, commencing on the date of the election and expiring at the second annual membership meeting after such election. Those persons receiving the most votes shall be elected to the number of positions to be filled. A member of the Board shall hold office until his or her respective successor is elected, he or she is removed, or he or she resigns. At the expiration of a Director's term of office, if a successor cannot be elected for any reason, the existing Director shall continue to hold office and begin serving another term until his or her successor is elected to fill the remainder of such new term, or he or she resigns.

(iii) Removal of Directors

(A) Removal by Owners

At any duly called membership meeting, for which the notice given called for a vote to remove any Director(s), such Director(s) may be removed with or without cause by Owners holding a majority of the total Association vote. A successor may then and there be elected to fill the vacancy created. Any Director whose removal has been proposed by the Association membership shall be given an opportunity to be heard at the meeting. To ensure a Director has a chance to present a statement to the membership, the Owners' vote to remove a Director cannot be accomplished by written ballot or written consent.

(B) Removal by Board of Directors

Any Director may be removed by the vote of the other Association Directors if: (1) he or she is absent from 3 or more meetings of the Board of Directors in any fiscal year; (2) his or her Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge; (3) the voting rights for his or her Lot have been suspended; (4) he or she was appointed by the other Directors to fill a vacancy; or (5) he or she files any legal action, counterclaim or administrative action against the Association, any Director or Officer, in his or her capacity as such, or the Association's managing agent.

(iv) Vacancies

Vacancies in the Board of Directors caused by any reason, except the removal of a Director by vote of the Association membership, shall be filled by a vote of the remaining Directors. Unless earlier removed, the successor so selected shall hold office for the remainder of the term of the Director position being filled.

(v) Compensation

Directors shall not be compensated for services performed within the scope of their duties

as Association Directors unless authorized by a vote of the Association membership. However, Association Directors may be compensated for performing maintenance or other services as set forth in Paragraph 3(a)(vi) below. Compensation, as may be authorized herein, can include payment but shall not include a waiver of assessments or other Association charges. Directors also may be reimbursed for the expenses incurred in carrying out their duties as Association Directors upon the approval of such expenses by the Board of Directors. The Association may give the Directors nominal gifts or tokens of appreciation for recognition of services performed by them. For purposes hereof, reasonable food and beverages purchased for meetings of the Board shall not be considered compensation.

(vi) Director Conflicts of Interest

Nothing herein shall prohibit a Director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as Director, provided that the Director's interest is disclosed to the Board of Directors and the non-interested voting Directors approve such contract. The interested Director shall not count for purposes of establishing a quorum of the Board and, if present at a meeting (if any), must leave the room during the discussion on such matter.

(vii) Nomination

Nomination for election to the Board of Directors shall be made from the floor at the meeting, or, if elections are conducted by mail-in ballot or electronically in lieu of a meeting, by the method and date prescribed by the Board. The Board also may appoint a nominating committee to make nominations prior to the meeting. Each nominee shall be given a reasonable opportunity to communicate his or her qualifications to the membership prior to the election.

(viii) Elections

Directors shall be elected at the annual membership meeting or by mail-in or electronic ballot in lieu of such meeting. If elections are held at the annual membership meeting, voting shall be by written ballot, unless dispensed with by unanimous consent or unless a slate of candidates is unopposed and is accepted by acclamation. The nominees receiving the most votes shall fill the directorships for which elections are held. There shall be no cumulative voting.

(b) Meetings

(i) Regular Meetings

Regular meetings of the Board of Directors shall be held at least semi-annually, at such time and place as determined by the Board.

(ii) Special Meetings

The President is authorized to call a special Board of Directors meeting. In addition, the President is required to call a special Board meeting at the request of at least a majority of the Directors.

(iii) **Notice of Meetings**

Except as provided in this Paragraph, the President or Secretary shall give each Director at least two-days notice of any Board of Directors meeting. A newly elected Board may meet immediately following their election without notice. Regularly scheduled Board meetings may be held without notice, provided the schedule for such meetings is announced to the Directors.

(iv) **Waiver of Notice**

Waiver of notice of a Board of Directors meeting shall be deemed the equivalent of proper notice. Any Director may, in writing, waive notice of any Board meeting, either before or after such meeting. A Director's attendance at a Board meeting shall be deemed waiver by such Director of improper notice, unless such Director objects to improper notice at the time the meeting is called to order. If all Directors are present at any Board meeting, no notice shall be required, and any business may be transacted at such meeting.

(v) **Quorum and Voting**

The presence of Directors entitled to cast one-half of the eligible votes of the Board of Directors shall constitute a quorum for the transaction of business. One or more Directors who participate in a Board meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, if all persons participating in such meeting can hear each other. Directors may not participate in Board meetings by proxy.

Unless otherwise provided herein, all decisions of the Board of Directors shall be by majority vote. No Director shall participate in any vote of the Board if, at the time of the vote, his or her Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, or the voting rights for such Lot have been suspended.

(vi) **Conduct of Meetings**

The President shall establish the agenda for, and preside at, and the Secretary shall keep the minutes of, all Board of Directors meetings. The President may establish rules of conduct and the order of business for all Board meetings.

If the Board of Directors allows Owners to attend Board meetings, then except as expressly authorized by the Board, only Directors may participate in discussions or deliberations at the Board meeting. Notwithstanding the above, the Directors may adjourn any Board meeting and reconvene in executive session, with only the Directors and other people authorized by the Board present. In executive session, the Board may discuss and vote upon personnel matters, litigation in which the Association is or may become involved, delinquent accounts, violations of the Association Legal Documents, 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.

The Board of Directors may order the removal of any meeting guest who, in opinion of a majority of the Directors present at the meeting, either disrupts the conduct of business at the Board meeting or fails to leave such meeting upon request after an announcement that the Board will reconvene in executive session.

(vii) Action Without a Meeting

The Board of Directors can take action outside of a properly called meeting if a majority of the eligible Directors consent in writing to such action. While the written consents must describe the action taken outside a meeting and be filed with the minutes of the Board meetings, the writings may be electronic as further described in Section 1(e) of the Bylaws.

(c) Authority

(i) Powers and Duties

The Board of Directors shall manage the affairs of the Association and have every right, power and privilege authorized or implied herein and under Georgia law to effectuate such responsibilities. Unless otherwise required by the Declaration, the Act or the Georgia Nonprofit Corporation Code, the Board may perform all of its responsibilities without a vote of the Association membership. The Board may delegate any and all of its functions, in whole or in part, to any other entity. Directors shall discharge their duties and their conduct shall be evaluated in accordance with the business judgment rule as set forth in O.C.G.A. Section 14-3-830. In addition to the duties imposed by these Bylaws, the Board shall have the power to do the following (by way of explanation and not limitation):

- (A)** control, manage, operate, maintain, repair, replace, and improve all portions of the Common Property, as defined in the Declaration;
- (B)** grant and accept permits, licenses, utility easements, leases, and other easements;
- (C)** acquire, hold and dispose of tangible and intangible personal property and real property;
- (D)** make, delete and amend reasonable rules and regulations governing the use of the Community;
- (E)** enforce by legal means the provisions of the Association Legal Documents as provided in the Declaration and the Act;
- (F)** bring or defend any actions or proceedings which may be instituted on behalf of or against the Owners concerning the Association or the Common Property;
- (G)** prepare and adopt an annual budget and establish the contribution from each Owner to the Common Expenses;
- (H)** establish the means and methods of collecting assessments as provided in the Declaration;
- (I)** deposit Association funds in a financial depository or institution that the Board of Directors shall approve, or otherwise invest the

- proceeds in accordance with any limitations set forth in O.C.G.A. Section 14-3-302, and use such funds to administer the Association;
- (J) designate the signatories of all Association bank and other financial accounts;
 - (K) obtain and carry insurance against casualties and liabilities as provided in the Declaration and pay the premium cost thereof;
 - (L) make or contract for the making of repairs, additions and improvements to, or alterations of, the Common Property after damage or destruction by fire or other casualty, in accordance with the other provisions of the Declaration and these Bylaws;
 - (M) designate, hire, dismiss and contract with the personnel necessary to operate the Association and the personnel necessary to maintain, repair, replace and improve the Common Property and, where appropriate, compensate such personnel;
 - (N) purchase equipment, supplies and material to be used by Association personnel in the performance of their duties; and
 - (O) ratify any and all prior decisions and acts of prior Board of Directors while operation of the Board occurred by a membership-in-common structure. The Board of Directors, at its discretion, may ratify any prior decisions, contracts, and/or agreements of the Board of Directors by a written Board resolution.

(ii) Management Agent

The Association may, but shall not be required to, hire a professional management agent or agents, to be compensated as established by the Board of Directors, and to perform such duties and services as the Board shall authorize. The Board shall use reasonable efforts to provide for termination of any such management contract with or without cause and without penalty, upon no more than 30 days written notice, and for a term not in excess of one year.

(iii) Committees

(A) Nominating Committee

The Board of Directors may appoint a nominating committee to nominate candidates for election to the Board.

(B) Architectural Control Committee

The Board of Directors may establish an Architectural Control Committee to administer the architectural controls as provided in the Declaration.

(C) Other Committees

The Board may establish such other committees as it shall determine, with the powers and duties that the Board of Directors shall authorize.

(D) Service on Committees

Unless otherwise provided by the Board of Directors, the Board in its discretion may appoint and remove the members and chairpersons of each committee. All committees serve at the discretion and at the direction of the Board of Directors.

(d) Liability and Indemnification

The Association shall indemnify every Director, officer and committee member against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon such Director, officer or committee member in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been a Director, officer, or committee member, whether or not such person is a Director, officer or committee member at the time such expenses are incurred subject to the limitations below.

The Directors, officers, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such Director, officer, or committee member in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The Directors and officers shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such Directors or officers may also be members of the Association), and the Association shall indemnify and forever hold each such Director and officer free and clear 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 Director, officer, or committee member, or former Director, officer, or committee member, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and, if obtainable, directors' and officers' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

4. OFFICERS

(a) Designation and Qualification

The principal officers of the Association shall be the President, Vice President, Secretary, and Treasurer. The President, Vice President and Secretary must be Directors, but the Treasurer need not be a Director. Except for the offices of Secretary and Treasurer, which may be held by the same person, no person may hold more than one office simultaneously.

(b) Election and Terms of Offices

The Board of Directors shall elect the Association officers annually at the first Board meeting following each annual membership meeting. The Association officers shall serve until a successor is elected, the Board removes the officer, or the officer resigns. The Board of Directors shall consist of nine members, with three year staggered terms.

(c) Removal of Officers

The Board of Directors may remove any officer with or without cause.

(d) Vacancies

The Board of Directors may fill any vacancy in any office arising because of death, resignation, removal, or otherwise. Unless earlier removed, the successor so selected shall hold office for the remainder of the term of the officer position being filled.

(e) President

The President shall be the chief executive officer of the Association and shall establish the agenda for and preside at all meetings of the membership and the Board of Directors. The President shall have all the general powers and duties that are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code.

(f) Vice President

The Vice President shall act in the President's absence and shall have the same powers, duties, and responsibilities as the President when so acting.

(g) Secretary

The Secretary shall keep the minutes of all meetings of the membership and the Board of Directors. The Secretary also shall keep all Association books and records and perform all duties incident to the office of the secretary of a corporation organized under the Georgia Nonprofit Corporation Code.

(h) Treasurer

The Treasurer shall have the responsibility for the Association's funds and securities. The Treasurer shall keep full and accurate financial records and books of account showing all receipts and disbursements of the Association, prepare all required financial statements and tax returns, deposit all Association funds in such depositories as may be designated by the Board of Directors, and prepare the budget as provided in the Declaration. The Treasurer may delegate all or a part of the above responsibilities to a management agent.

(i) Other Officers

The Board of Directors may appoint one or more assistant treasurers, assistant secretaries, or other officers or subordinate officers with such titles and duties as defined by the Board. Any assistant, subordinate or other officers shall not be required to be Directors.

(j) Agreements, Contracts, Deeds, Leases, Etc.

At least two officers of the Association (or such other person(s) as may be designated by resolution of the Board of Directors) shall execute all agreements, contracts, deeds, leases, promissory notes, and other instruments of the Association.

(k) Standard of Conduct

Officers shall discharge their duties and their conduct shall be evaluated in accordance with the business judgment rule described in O.C.G.A. Section 14-3-842.

5. MISCELLANEOUS

(a) Notices

(i) Method of Giving Notices

Unless otherwise prohibited by these Bylaws or the Declaration, all notices and other communications required by the Association Legal Documents shall be in writing and shall be given by:

- (A) Personal delivery;
- (B) United States mail, first class, postage prepaid;
- (C) Statutory overnight delivery;
- (D) Electronic mail;
- (E) Facsimile; or
- (F) A secure web site, provided that notice shall be deemed given via web site only upon proof that the addressee has retrieved the message.

(ii) Address For Notices.

Notices given by one of the methods described above shall be given:

- (A) If to a Lot Owner, to the address, electronic mail address or facsimile number that the Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Lot of such Owner;
- (B) If to an Occupant, to the address, electronic mail address or facsimile number that the Occupant has designated in writing with the Secretary or, if no such address has been designated, at the address of the Lot occupied; or

(C) If to the Association, the Board of Directors or the managing agent, to the postal address, facsimile or electronic mail address of the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary. The Secretary shall promptly provide notice to all Owners of any such change in address.

(b) Fiscal Year

The fiscal year of the Association shall be the calendar year unless otherwise set by resolution of the Board of Directors.

(c) Financial Statements

Financial statements shall be prepared annually in the manner provided by the Board of Directors. Financial statements must be made available to Owners and to the holder, insurer or guarantor of any first mortgage on a Lot within 60 days of the end of the Association's fiscal year.

(d) Financial Review

A financial review of the Association's accounts shall be performed annually in the manner provided by the Board of Directors. The Board shall give a financial report to the Owners at the annual membership meeting. Thereafter, a majority of the total Association membership may require that an independent accountant audit the Association's accounts, as a Common Expense. The audit, if applicable, shall be made available to the holder, insurer, or guarantor of any first mortgage on a Lot upon submission of a written request therefor.

(e) Amendment

(i) Member Approval Procedure. Except where a higher vote is required for action under any other provisions of the Declaration, these Bylaws or by the Act, these Bylaws may be amended with the approval of Owners holding two-thirds of the total eligible Association vote. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the DeKalb County, Georgia land records.

(ii) Default Approval Procedure After Owner Non-response. It is recognized that, when Owners fail to participate in an amendment vote because of apathy or other reasons which are not based on any disagreement with a proposed amendment, important amendments to the Declaration or Bylaws may have no chance of approval, with the supermajority voting requirements established under the Act. It also is recognized that supermajority voting requirements are important for Owner actions which are as significant as amending the Declaration or these Bylaws. To balance these competing concerns, this subparagraph establishes a mechanism which provides every eligible Owner an opportunity to issue a vote of approval, disapproval or abstention on proposed amendments to the Declaration or

Bylaws, but also a realistic mechanism for approving important amendments, without the damaging consequences of Owner non-response.

The Board shall issue notice of all proposed amendments to each Owner. With each such notice, the Board shall include a copy of the proposed amendment, along with a consent form or ballot, which complies with the requirements of these Bylaws. Each such consent form or ballot shall give Owners an opportunity to vote for, vote against or abstain from voting on the proposed amendment.

If the amendment is not approved or defeated by sufficient vote within 60 days of the amendment notice described above, then the Board may seek to obtain default approval from Owners under this subparagraph. In such case, the Board shall send default approval notice, by certified mail, to all Owners who have not returned consents or ballots on a proposed amendment within that 60-day period. This default approval notice also shall include a consent form or ballot, as provided above, along with a statement that the Owner's failure to return an executed consent form or ballot, marked with a vote for, a vote against, or an abstention from voting on the amendment, within 30 days of the date of such default approval notice, will be deemed consent to such amendment. If the Board does not receive such consent or ballot within that 30-day period, the Owner shall be deemed to have consented to and approved the amendment.

(iii) Eligible Mortgage Holder Approval. In addition to approval by the Owners as provided above, material amendments to the Declaration and these Bylaws must be approved by Eligible Mortgage Holders who represent at least 51% of the votes of Lots that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within 30 days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

(iv) Amendments to Comply with Law or Conform Documents. Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend the Declaration and these Bylaws to comply with any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA"), or to resolve conflicts between the Declaration, these Bylaws, the Articles, and applicable laws.

(v) **Validity of Amendments.** No Person shall be permitted to bring any legal action to challenge the validity of an amendment to the Declaration or these Bylaws more than one year after the recording thereof in the DeKalb County, Georgia land records.

(f) Books and Records

To the extent provided in O.C.G.A. Section 14-3-1602, and upon written request received at least five business days before the date requested for an inspection, all Association Owners and any Eligible Mortgage Holder shall be entitled to inspect the Association's books and records at a reasonable time and location specified by the Association. The Association can limit the length of time of each inspection, but such time limit shall not be less than two hours per inspection. The Association may impose a reasonable charge, covering the cost of labor, materials and copies of any documents, including but not limited to the customary copy charge and hourly fee of the Association's agent supervising such inspection. To prevent abuse of an Owner's inspection rights, records previously inspected by an Owner are not subject to inspection again by the same Owner more than once per year.

Notwithstanding anything to the contrary, the Board may limit or preclude the inspection of confidential or privileged documents, including but not limited to, attorney/client privileged communication, executive session meeting minutes, and financial records or accounts of other Owners. Minutes of all meetings of the membership and the Board become official Association records when approved by the membership or the Board, as applicable.

(g) Conflicts

The duties and powers of the Association shall be those set forth in the Act, the Georgia Nonprofit Corporation Code, the Declaration, the Articles of Incorporation, and these Bylaws, together with those reasonably implied to affect the purposes of the Association. If there is a conflict or inconsistency between the Act, the Georgia Nonprofit Corporation Code, the Declaration, the Articles of Incorporation or these Bylaws, such laws and documents, in that order, shall prevail.

(h) No Discrimination

No action shall be taken by the Association or the Board of Directors that would unlawfully discriminate against any person on the basis of race, creed, color, religion, sex, national origin, familial status or handicap.

(i) Captions

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

(j) Gender and Grammar

The use of the masculine or feminine gender in these Bylaws shall be deemed to include the

opposite gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

(k) Severability

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

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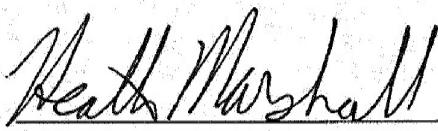
CERTIFICATION

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of Berkley Township Property Owners' Association, Inc., a Georgia corporation; and
2. That the foregoing Bylaws constitute the Bylaws of said Association, as duly adopted by the Board of Directors and the members of the Association on the 22 day of Oct, 2019

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 22 day of Oct, 2019.

**BERKLEY TOWNSHIP PROPERTY OWNERS'
ASSOCIATION, INC.**


Heath Marshall (Seal)
Secretary

[Corporate Seal]