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5/27/2014 10:05:18 AM

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DeKalb County, Georgia

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Return to: Weissman, Nowack, Curry, & Wilco, P. C.  
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Attention: Rebecca F. Drube

STATE OF GEORGIA  
COUNTY OF DEKALB

Instructions to Clerk

- 1) Cross-Reference to Original Declaration and Plat  
Books set forth below;
- 2) Cross-Reference and index each signatory (see  
Exhibit "A") in Grantor Index;
- 3) Cross-Reference and index Stillwood  
Homeowners Association, Inc. in Grantor and  
Grantee Indexes

All Lots Subject to this Declaration are located in  
Land Lot 1 of the 18th District, DeKalb County,  
Georgia

Cross-Reference: Plat is recorded in  
Plat Book 86, Page 90  
Plat Book 87, Page 33  
Plat Book 87, Page 94

Original Declaration recorded in  
Deed Book 6063, Page 698

## AMENDED AND RESTATED DECLARATION OF MEMBERSHIP AND ADDITIONAL COVENANTS FOR STILLWOOD TOWNHOMES

**IMPORTANT NOTICE**

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

CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING BOTH ASSESSMENTS/CHARGES DUE ON UNITS AND ANY UNCURED ARCHITECTURAL VIOLATIONS OR UNAUTHORIZED IMPROVEMENTS ON UNITS, PURSUANT TO THE PROVISIONS HEREOF.

COPYRIGHT © 2014 All rights reserved. This Amended and Restated Declaration may be used only in connection with the ownership and sale of property at Stillwood Townhomes and the operation of the Stillwood Homeowners Association, Inc. Association, Inc.

PREPARED BY:

Weissman Nowack  
Curry & Wilco, P.C. 

CHANGING THE LANDSCAPE

Rebecca F. Drube, Esquire

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**WHEREAS**, a Declaration of Covenants, Conditions and Restrictions for Stillwood ("Original Declaration") was recorded in Deed Book 6063, Page 698, et seq., DeKalb County, Georgia records, as amended; and

**WHEREAS**, Article XII, Section 4 of the Original Declaration provides that the Original Declaration may be amended by the affirmative vote or written consent of at least a majority of the Owners other than the Declarant and the consent of the Declarant for so long as Declarant has the right to unilaterally subject property to the Declaration and/or holds any Units for sale; and

**WHEREAS**, in accordance with Article VI, Section 4 of the By-Laws of Stillwood Homeowners Association, Inc. ("Original By-Laws"), the Original By-Laws may be amended by affirmative vote or written consent of at least a majority of the Owners other than the Declarant and the consent of the Declarant for so long as Declarant retains power over the actions of the Board of Directors under Article III of the Bylaws; and

**WHEREAS**, Owners of at least a majority of the Units desire to amend the Original Declaration and the Original Bylaws and have approved this Amendment to the Original Declaration ("Declaration Amendment") and Amendment to the Original Bylaws ("Bylaws Amendment"), as evidenced by their execution of this Declaration; and

**WHEREAS**, the consent of Declarant to the Declaration Amendment and Bylaws Amendment is not necessary as Declarant no longer possesses the right to unilaterally subject property to the Declaration, no longer holds any Units for sale and no longer retains any control over the actions of the Board of Directors under Article III of the Bylaws; and

**WHEREAS**, this Declaration Amendment contains additional protective covenants in Paragraph 14 hereof to which only the Unit Owners in Stillwood who have executed this Declaration Amendment and who are listed on Exhibit "A" hereto, or who have filed a written consent in the form attached as Exhibit "C" hereto in the DeKalb County, Georgia records, are subject. The Owners of that certain real property described in signature page(s) affixed hereto and as are listed on Exhibit "A" attached hereto and incorporated herein by reference desire to subject their Units to the additional covenants and provisions contained within Paragraph 14 of this Declaration Amendment and do hereby subject their Units and the Property to the provisions of Paragraph 14 and continuing Covenant Membership in Stillwood Homeowners Association, Inc. (the "Association"), as such is defined in this Declaration Amendment; and

**WHEREAS**, the Unit Owners who have executed this Declaration do hereby consent, on behalf of such Owner, Owner's successors, successors-in-title, heirs, and assigns, that such Owner's Unit shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all of the terms, provisions, covenants, and restrictions contained in this Declaration and Paragraph 14 hereof, as a Covenant Member (as defined in the Declaration) of the Association, all of which shall run with the title to such Owner's Unit and shall be binding upon all persons having any right, title, or interest in Owner's Unit, their respective heirs, legal representatives, successors, successors-in-title, and assigns; and

**WHEREAS**, Owners of Units who have not subjected their Units to Paragraph 14 hereof by execution of this Declaration Amendment or by filing of a written consent in the form attached as Exhibit "C" hereto in the DeKalb County Official Records are not subject to the provisions of Paragraph 14 but are subject to all other terms and provisions of this Declaration Amendment and Bylaws Amendment pursuant to the approval of these Amendments by the majority of all Unit Owners in accordance with Article XII, Section of the Original Declaration and Article VI, Section 4 of the Original Bylaws. Provided, however, that in the event a court of competent jurisdiction determines that any provision of this Declaration Amendment attempts to impose additional restrictions on a Unit Owner's use of his or her Unit without such Unit Owner's consent in writing thereto, then such provision of this Declaration Amendment shall not be binding on the Unit Owner so involved, unless such Unit Owner consents thereto; and if such consent is not forthcoming, then the relevant provision(s) of the Original Declaration prior to this Amendment shall control with respect to the affected Unit Owner; and

**WHEREAS**, these preambles are incorporated into the Declaration pursuant to the terms thereof.

**NOW, THEREFORE**, those portions of the Original Declaration that have not already expired pursuant to Georgia law, the Original By-Laws, and all exhibits thereto, are hereby stricken in their entirety and this Declaration and Bylaws are simultaneously substituted therefore:

---

**AMENDED AND RESTATED  
DECLARATION OF MEMBERSHIP AND  
ADDITIONAL COVENANTS FOR STILLWOOD  
TOWNHOMES**

---

**IMPORTANT NOTICE**

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

CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING BOTH ASSESSMENTS/CHARGES DUE ON UNITS AND ANY UNCURED ARCHITECTURAL VIOLATIONS OR UNAUTHORIZED IMPROVEMENTS ON UNITS, PURSUANT TO THE PROVISIONS HEREOF.

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PREPARED BY:

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Weissman Nowack  
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## 1. NAME

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

## 2. DEFINITIONS

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Unless the context otherwise requires, capitalized terms used in this Declaration and the By-Laws, shall be defined as set forth in this Paragraph 2. Otherwise, the terms used in this Declaration and the By-Laws shall have their normal, generally accepted meanings or the meanings given in the Act or the Georgia Nonprofit Corporation Code.

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

B. Architectural Review Committee or ARC mean the committee established to exercise the architectural review powers set forth herein, which shall be the Board of Directors of the Association unless the Board appoints a separate Architectural Review Committee.

C. Articles of Incorporation or Articles means the Articles of Incorporation of Stillwood Homeowners Association, Inc., filed with the Secretary of State of the State of Georgia.

D. Association means Stillwood Homeowners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

E. Association Legal Documents means this Declaration and all exhibits hereto, the By-Laws, the Articles of Incorporation, the plats and all rules and regulations and architectural guidelines for the Association, all as may be supplemented or amended.

F. Balcony shall mean an outdoor space inset into the upper story of a Unit, accessible only through the Unit and entirely covered by the ceiling of such Unit, that is enclosed on at least two sides by the exterior walls of the Unit and the remaining sides by a railing.

G. Board or Board of Directors means the body responsible for management and operation of the Association.

H. By-Laws means the By-Laws of Stillwood Homeowners Association, Inc., attached to this Declaration as Exhibit "D" and incorporated herein by this reference.

I. Common Property means any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

J. Common Expenses means the expenses incurred or anticipated to be incurred for the general benefit of all Units, including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Property.

K. Community means that real estate which is submitted to the Act and the provisions of this Declaration, as described in Exhibit "B" attached hereto and incorporated herein by reference. The Community is a residential property owners' development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie 1982), as may be amended.

L. Community-Wide Standard means the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors and the Architectural Review Committee.

M. Covenant Member means an Owner whose Unit has been subjected to Covenant Membership in the Association by signature hereto or by written consent recorded in the DeKalb County,

Georgia land records, as provided in this Declaration. Covenant Members shall be subject to and bound by the provisions of Paragraph 14 hereof.

**N. Covenant Unit** means a Unit that has been subjected to Covenant Membership in the Association by Owner signature hereto or by written consent recorded in the DeKalb County,

**O. Declaration** means this Declaration of Membership and Additional Covenants for Stillwood.

**P. Deck** means a raised, uncovered platform surrounded by a railing that is attached to the exterior wall of the residence on a Unit and is accessible only through a Unit and not from the Common Property grounds.

**Q. Director** means a member of the Association's Board of Directors.

**R. Domestic Partner** means any adult who cohabitates with an Owner, and who has been designated as the Owner's Domestic Partner in a written statement, signed by the Owner and filed with the Association's Secretary. A person shall no longer be a Domestic Partner upon the Secretary's receipt of a written termination notice, signed by either the Owner or the Domestic Partner.

**S. Effective Date** means the date that this Declaration is recorded in the DeKalb County, Georgia land records.

**T. Eligible Mortgage Holder** means a holder of a first Mortgage secured by a Unit who has submitted a request in writing to the Association to be deemed an Eligible Mortgage Holder. Such notice must include the mortgage holder's name and address and the Unit number or address of the property in the Community secured by such mortgage.

**U. Mortgage** means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.

**V. Mortgagee or Mortgage Holder** means the holder of any Mortgage.

**W. Occupant** means any person staying overnight in a dwelling on a Unit for a total of more than 30 days, either consecutive or nonconsecutive, in any calendar year.

**X. Officer** means an individual who is elected by the Board of Directors to serve as President, Vice President, Secretary, or Treasurer, or to hold such other office as may be established by the Board of Directors.

**Y. Owner** means the record title holder of a Unit, but shall not include a Mortgage Holder. For purposes hereof, the holder of a tax deed on a Unit shall be deemed the Owner thereof, notwithstanding the fact that there may exist a right of redemption on such Unit.

**Z. Person** means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

**AA. Plats** means those plats of the survey relating to the Community filed in Plat Book 86, Page 90 and Plat Book 87, Page 33 and 94 of the DeKalb County, Georgia land records. All of the Plats of survey are incorporated herein by this reference.

**BB. Porch** means a raised platform attached to the exterior wall of the residence on a Unit that provides access to such Unit's front door from the Common Property grounds outside of the Unit.

**CC. Total Association Vote** shall mean all of the eligible votes attributed to members of the Association.

**DD. Unit** means any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes a single dwelling site, as shown on the subdivision plat(s) for the Community, recorded in the land records of DeKalb County, Georgia

**EE. Violator** means any Owner who violates the Association Legal Documents and any Owner's family member, guest or Occupant who violates such provisions; provided, however, if an Owner's



family member, guest or Occupant violates the Association Legal Documents, the Owner of the relevant Unit also shall be considered a Violator.

### **3. SUBMITTED PROPERTY AND ADDITIONAL PROPERTY**

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#### **A. Submitted Property**

The real property in the Community subject to this Declaration and the Act is located in Land Lot 1, of the 18th District of DeKalb County, Georgia, being more particularly described in Exhibit "B" attached to this Declaration, and incorporated herein by this reference and as may be shown on the Plats.

Provided, however, that only the Units in Stillwood submitted to the provisions of Paragraph 14 of this Declaration by the Owners' execution of this Declaration are subject to Paragraph 14. However, by one or more consent forms executed by Owners of other Units in Stillwood, which forms are substantially in the form set forth in Exhibit "C" hereto, other Units may be subjected to Paragraph 14 of this Declaration.

### **4. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

---

#### **A. Membership**

(1) **Members Generally.** Each Unit Owner shall be a member of the Association. This does not include persons who hold an interest merely as security for the performance of an obligation. The giving of a security interest shall not terminate an Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Unit owned in the Community. An Owner's spouse or Domestic Partner may exercise all membership rights and privileges of the Owner.

(2) **Covenant Members.** Each Unit Owner whose Unit is submitted to Covenant Membership in the Association by execution hereof or by a consent form (as set forth above) recorded in the DeKalb County, Georgia land records, shall be a Covenant Member of the Association and subject to the additional covenants set forth in Paragraph 14. Covenant Membership shall be appurtenant to and may not be separated from ownership of any such Member Unit.

#### **B. Voting**

The Owner(s) of each Unit shall be entitled to one equally weighted vote for such Unit, which vote may be exercised and suspended as provided in this Declaration and the By-Laws.

### **5. ALLOCATION OF LIABILITY FOR COMMON EXPENSES**

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#### **A. General Allocations**

Except as provided below, or elsewhere in the Act or the Association Legal Documents, the amount of all Common Expenses shall be assessed against all the Units equally.

#### **B. Specific Assessments**

Notwithstanding the above, the Board of Directors shall have the power to levy specific assessments pursuant to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board to do so shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.

### **6. ASSOCIATION RIGHTS AND RESTRICTIONS**

---

**A. Association Rights and Restrictions.** The Association, acting through its Board of Directors, shall have the right and authority, in addition to and not in limitation of all other rights it may have, to:

(1) make and to enforce reasonable rules and regulations governing the use of the Common Property and the Covenant Units;

(2) enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by imposing reasonable monetary fines, exercising self-help powers, and suspending use and voting privileges and services paid for as a Common Expense, as provided herein. These powers,

however, shall not limit any other legal means of enforcing the use restrictions or Association rules and regulations by either the Association or, in an appropriate case, by an aggrieved Owner;

(3) grant and accept permits, licenses, utility easements, and other easements, permits, or licenses necessary for the proper maintenance or operation of the Community under, through, or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Community;

(4) control, manage, operate and, in the Board's discretion, maintain, replace, alter or improve all portions of the Community for which the Association is assigned maintenance responsibility under this Declaration;

(5) to represent and act on behalf of the Association in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;

(6) represent the Owners in dealing with governmental entities on matters related to the Common Property;

(7) permanently or temporarily close any portion of the Common Property (excluding: (i) any portion of the Common Property the use of which is reasonably necessary for access to or from a Unit, and (ii) any portion of the Common Property subject to an Easement Agreement) with thirty (30) days prior notice to all Owners, except that, in emergency situations requiring a temporary closing, prior notice shall not be required so long as notice is given within three (3) days after the closing explaining the reason for the closing. Notwithstanding the above, the Owners may re-open the closed Common Property by a majority of the Total Association Vote, cast at a duly called special or annual meeting;

(8) acquire, lease, hold, and dispose of tangible and intangible personal property and real property; and

(9) to enter into joint agreement and contracts with other Persons for the provision of services, including, without limitation, management, landscaping, property monitoring services, and trash removal services.

**B. Variances.** Notwithstanding anything to the contrary contained in this Declaration, the Board of Directors or its designee 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 would not be inconsistent with the overall scheme of development for the Community.

## **7. ASSESSMENTS**

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### **A. Purpose of Assessment**

The Association shall have the power to levy assessments as provided herein and in the Act. Assessments shall be used for any purpose the Board of Directors determines will benefit the Owners or the Community.

### **B. Creation of the Lien and Personal Obligation For Assessments**

Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments and other charges levied pursuant to this Declaration and the By-Laws.

All assessments and charges levied against a Unit and its Owner, together with interest, costs and reasonable attorneys' fees actually incurred (including post-judgment attorneys' fees, costs and expenses), and rents (if the Board of Directors so elects), in the maximum amounts permitted under the Act, shall be: (1) a charge and a continuing lien against such Unit; and (2) the personal obligation of the Person who is the

Owner of the Unit on the due date of the assessment. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance of the Unit. The Association, in the Board's discretion, may record a notice of such lien in the DeKalb County, Georgia land records evidencing the lien created under the Act and this Declaration. The lien provided for herein shall have priority as provided in the Act.

Assessments shall be paid in such manner and on such dates as determined by the Board of Directors. Unless otherwise provided by the Board, the annual assessment applicable to a Unit shall be paid in twelve (12) equal monthly installments, with each such installment due on or before the first of each month. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever.

### **C. Delinquent Assessments**

All assessments and charges not paid on or before the due date shall be delinquent, and the Owner shall be in default. In addition to the powers set forth below for collection of unpaid assessments and charges, the Association shall be entitled to exercise all other rights and remedies provided by law and in equity to satisfy an Owner's debt.

If any assessment or charge, or any part or installment thereof, is not paid in full within 15 days of the due date, or such later date as may be provided by the Board of Directors:

(1) a late charge equal to the greater of \$10.00 or 10% of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner;

(2) interest at the rate of 10% per annum, or such higher rate as may be authorized by the Act, shall accrue from the due date;

(3) the Board may accelerate and declare immediately due any unpaid installments of that Owner's assessments and charges. Upon acceleration, the Owner shall lose the privilege of paying such assessments and charges in installments, unless the Board otherwise reinstates such privilege in writing. If the Association has pending legal action against an Owner for unpaid assessments or charges, then no notice shall be required to accelerate unpaid installments of any annual or special assessments that come due during any fiscal year after such legal action commences, until all amounts owed are paid in full or the Board otherwise reinstates such privilege in writing; and

(4) the Association may bring legal action to collect all sums owed under the Declaration and Georgia law.

If assessments or other charges, or any part thereof, remain unpaid more than 30 days after the due date, the Owner's right to vote and use the Common Property are suspended automatically until all amounts owed are paid in full or the Board of Directors otherwise reinstates such rights in writing; provided, however, the Board may not deny ingress or egress to or from a Unit.

If part payment of assessments or other charges is made, the amount received may be applied first to post-judgment attorneys' fees, costs and expenses, then to costs and attorneys' fees not reduced to a judgment, then to interest, then to late charges, then to delinquent assessments and then to current assessments. Late charges may be assessed on delinquencies that are created by the application of current payments to outstanding delinquent assessments or charges.

### **D. Computation of Operating Budget and Annual Assessment**

To establish the annual assessment for a fiscal year, the Board of Directors shall prepare a budget covering the estimated costs of operating the Community, which may include a reserve contribution as provided below. The Board shall provide the budget to the Owners at least 30 days before the due date of such assessment, or the first installment thereof. The budget and the assessment shall become effective unless, before the due date of such assessment, a majority of the total Association membership votes to disapprove them at a duly called membership meeting.

If the membership disapproves the proposed budget or the Board of Directors fails for any reason to determine a new budget, the budget then in effect shall continue until a new budget is adopted as provided

herein. The Board may adopt an adjusted budget at any time during the year following the procedure specified above.

The budget shall not operate as a limitation on expenditures by the Board of Directors. The budget is merely an estimate of Common Expenses on which the Board establishes the annual assessment.

#### **E. Special Assessments**

In addition to the all other assessments and charges provided for herein, the Board of Directors may levy a special assessment against all Owners for any purpose. Special assessments totaling more than \$500.00 per Unit in any fiscal year must first be approved by at least a majority of those Owners either voting by written consent or ballot pursuant to the By-Laws, or at least a majority of those Owners present or represented by proxy at a duly called meeting of the members, notice of which shall specify the purpose of such meeting. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is to be imposed.

#### **F. Capital Budget and Contribution**

The Board of Directors may prepare an annual or multi-year capital reserve budget and may establish a capital reserve fund contribution based on such budget. Capital reserve budgets should take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

#### **G. Foreclosure Administration Fee**

It is recognized that foreclosures of mortgages on Units create substantial administrative and other burdens on the Association. These additional burdens on the Association include, but are not limited to, having to monitor the status of mortgages and legal periodicals to determine when foreclosures occur, searching the DeKalb County, Georgia land records to determine the names of the purchasers at foreclosure sales, contacting the foreclosure purchasers/owners regarding foreclosure-purchaser responsibilities and assessment obligations and updating Association records multiple times to deal with just a single Unit. Pursuant to this Declaration and Section 44-3-225(a) of the Act, the Association is authorized to assess individual Owners certain fees and expenses occasioned by and benefiting just those Owners or those Owners' Units. In accordance with these provisions, and in addition to annual assessments, special assessments, and other charges provided for in this Declaration, any Person who acquires a Unit at a foreclose sale of the mortgage on such Unit, or by deed in lieu of a foreclosure, will be required to pay the Association a Foreclosure Administration Fee of \$1,000.00 at the time the foreclosure deed or deed in lieu of foreclosure is recorded in the DeKalb County, Georgia records. The Foreclosure Administration Fee shall constitute a specific assessment as described in this Declaration.

#### **H. Statement of Account**

Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments and charges due and unpaid, including but not limited to any late charges, interest, fines, attorneys' fees or other charges against such Unit. The Association shall respond in writing within five business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Unit as of the date specified therein, if such statement is reasonably relied upon in connection with the issuance of any Mortgage on such Unit.

#### **I. Surplus Funds and Common Profits**

Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, be: (1) distributed to the Owners; (2) credited to the next assessment chargeable to the Owners; or (3) added to the Association's capital reserve account.

## **8. ASSOCIATION MAINTENANCE RESPONSIBILITY**

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### **A. Common Property**

The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping, pavements and improvements situated on the Common Property. The Association shall also maintain (whether or not constituting Common Property): (a) all entry features and entry area landscaping in the Community; (b) the exterior portions of all Units as further provided in Paragraph 8(B) hereof, (c) landscaping improvements located on the exterior portions of the Community, including parks, open space, medians and islands, as well as any irrigation system(s) serving such landscaping improvements; (d) Community street signs; (e) all private Community streets, roads, paths, sidewalks and any guardrails adjacent thereto; (f) storm water detention/retention ponds and storm water drainage facilities serving the Community, if and to the extent such facilities are not maintained by a governmental entity; (g) retaining walls in the Community, (h) perimeter fencing in the Community; (i) all water and sanitary sewer pipes or facilities that serve more than one Unit; and (j) the mailbox structure located on the Common Property, provided that the Association shall not be responsible for maintenance, repair and replacement of the lock and key to the individual mailboxes pertaining to each Unit. 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, may be assessed against the Owner as a specific assessment.

### **B. Association Responsibility for Unit Maintenance**

As provided in Paragraph 8(A) above, the Association shall maintain and keep in good repair the exterior portions of all Units of the Community, with the exception of the roof, roof systems, roof flashing and roof surfaces. Maintenance by the Association of exterior portions of Units shall include the following: (a) painting and staining the exterior surfaces of garage doors, entry doors, door frames and window frames; (b) painting, staining, repairing, and replacing all decks, porches, balconies, downspouts, gutters, and chimneys, provided that the Unit Owner, not the Association, is responsible for performing such routine cleaning and upkeep as is necessary to keep any deck, balcony and/or porch serving his or her Unit, whether located within or outside of the Unit boundaries, in a neat, tidy and sanitary condition; (c) painting, staining, repairing, replacing and caring for all other exterior building surfaces, including the exterior of the foundation walls either above or below grade; (d) maintenance, repair and replacement of all driveways, paved or concrete walkways, and exterior paved areas, even if located partially or wholly within the boundaries of a Unit; (e) maintenance, repair and replacement of all landscaping and grass areas; (f) maintenance, repair and replacement of hose bibs contained in the exterior walls of the Units and (g) maintenance, repair and replacement of all exterior lighting fixtures on the Units, provided that the Association shall not be responsible for the replacement of light bulbs of exterior lighting fixtures pertaining to individual Units, nor the provision of electricity thereto.

Except for such Unit maintenance as is specifically allocated to the Association pursuant to this Paragraph 8, the Association shall have no responsibility for any maintenance of the Unit nor any structures or other improvements located thereon. By way of illustration and not limitation, the Association shall not be responsible for maintaining and keeping in good repair the following: (a) HVAC or similar equipment, whether located inside or outside the Units; (b) garage doors, entry doors, door frames, window frames, glass doors, screen and storm doors, hinges and hardware which are part of the entry system (with the exception of such painting and staining as set forth above in Paragraph 8(b)(a)); (c) light bulbs in exterior lighting fixtures pertaining to a particular Unit; (d) window screens, window grids (mullions) and glass or any appurtenant window hardware; (e) foundations and footings, with the exception of the exterior of foundation walls; (f) the interior of the residence on a Unit and (g) pipes which serve only one (1) Unit whether located within or outside of the Unit's boundaries.

The Board of Directors may promulgate rules setting forth the extent of maintenance to be performed by the Association. 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.

Upon Board resolution and approval of a majority of the members present or represented by proxy at a duly constituted Association meeting, the Association may assume responsibility for providing additional maintenance upon Units. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association and located outside of the Community and to enter into easements and covenant to share costs agreements regarding property not owned by the Association where the Board has determined that such action would benefit the Owners.

#### **C. General Association Maintenance Provisions**

If, during the course of performing its maintenance responsibilities hereunder, the Board discovers that maintenance, repair or replacement is required of an item which is the Owner's responsibility, and such maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Owner and at the Owner's sole expense, without prior notice to the Owner, such being deemed an emergency situation hereunder.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Unit, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property, from any Unit or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, unless such injury or damage results directly and solely from the negligence or gross negligence of the Association. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Paragraph where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. 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 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 repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

#### **D. Party Walls**

Each wall or fence whether built as part of the original construction of the Units or added pursuant to the provisions hereof which shall serve and separate any two (2) adjoining Units shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Paragraph, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall or fence may restore it, and the other Owner who is benefited by the wall or fence shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions. In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a Majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

### **9. INSURANCE**

**A. Insurance on Common Property.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and, at the option of the Board of Directors, shall have the authority, but not the obligation, to obtain insurance for the residence and other improvements on Units. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, 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. Alternatively, the Board may purchase "all risk" coverage in like amounts.

The Board 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 and No/100 Dollars (\$1,000,000.00).

Premiums for all insurance obtained by the Association shall be a Common Expense of the Association. The policies may contain a reasonable deductible, and the deductible amount shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, except as otherwise provided above and shall be governed by the provisions set forth below:

- (1) All policies shall be written with a company authorized to do business in Georgia.
- (2) All policies on the Common Property shall be for the benefit of the Association and its members. Any policies covering improvements on Units shall be for the benefit of the Owners and their mortgagees, as their interests may appear.
- (3) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations, if any, related thereto.
- (4) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
- (5) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of who must be in the real estate industry and familiar with construction in the county where the Community is located.
- (6) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
  - (a) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;
  - (b) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
  - (c) a statement that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;
  - (d) a statement that no policy may be canceled, subjected to nonrenewable, invalidated, or suspended on account of any default or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the default or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(e) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(f) a statement that no policy may be canceled, subjected to nonrenewable or substantially modified without at least thirty (30) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain directors' and officers' liability coverage, worker's compensation insurance (if and to the extent necessary to satisfy the requirements of applicable laws), and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. The amount of fidelity coverage shall be determined in the directors' best business judgment, but if reasonably available, shall not be less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to nonrenewable or substantially modified without at least thirty (30) days prior written notice to the Association.

**B. Individual Insurance.** Each Owner, by virtue of taking title to a Unit subject to the terms of this Declaration, covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all risk casualty insurance on the Unit and all structures constructed thereon and a liability policy covering damage or injury occurring on a Unit. If reasonably available, the casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all risk" policy, including vandalism and malicious mischief, 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. If all risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage on his or her Units and structures constructed thereon meeting the same requirements as set forth in Paragraph 9(A)(6)(a) and Paragraph 9(A)(6)(c) for insurance on the Common Property. The deductible amount per occurrence for coverage obtained by an Owner shall not exceed Five Thousand and No/100 Dollars (\$5,000.00). The policies required hereunder shall be in effect at all times. Upon request by the Association, an Owner shall furnish a copy of his/her insurance policy or policies to the Board. In the event that any Owner fails to obtain and maintain insurance, as required by this sub-Paragraph, the Association may purchase such insurance on behalf of the Owner and specifically assess the cost thereof to the Owner, to be collected in the manner provided for collection of Common Expenses under this Declaration.

Each Owner further covenants and agrees that in the event of damage and destruction of structures on his Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is made in accordance with the terms of this Declaration. The Owner shall pay any costs of repair or reconstruction that is not covered by insurance proceeds. In the event that the structure is totally destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Unit in a neat and attractive condition consistent with the Community-Wide Standard.

**C. Insurance Deductibles.** The required deductible for any casualty insurance policy carried by the Association shall, in the event of an insured loss, be allocated among the Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Property, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in accordance with the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Owner shall be responsible for paying the deductible pertaining to his or her Unit, if any. If any Owner or Owners fails to pay the deductible when required under this Paragraph, then the Association can pay the deductible and specifically assess the cost to the Owner or Owners.

**D. Casualty Losses.** In the event of damage to or destruction of all or any part of the



Community as a result of fire or other casualty, unless eighty percent (80%) of the Total Association Vote, including the Owner or Owners of the damaged Unit, vote not to proceed with the reconstruction and repair of the structure, the Board of Directors or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Owner with respect to the distribution of proceeds to any such Unit.

**(1) Cost Estimates.** Immediately after a fire or other casualty causing damage to the Community, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Unit) to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

**(2) Source and Allocation of Proceeds.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board of Directors, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Owners without the necessity of a vote of the members or compliance with Paragraph 7(E) above. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board of Directors.

**(3) Plans and Specifications.** Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Community was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board of Directors. To the extent insurance proceeds are available, the Association may reconstruct or repair owner improvements damaged as a result of fire or other casualty.

**(4) Encroachments.** Encroachments upon or in favor of Units that may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Community was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

**(5) Construction Fund.** The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against the Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Section to be disbursed by the Association in appropriate progress payment to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board of Directors.

## **10. EMINENT DOMAIN**

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Whenever any Common Property is taken by, or conveyed in lieu of condemnation to, any authority having condemnation or eminent domain power, the Board of Directors shall give notice thereof to each Owner. If any structure on the Common Property is so taken or conveyed, the Board shall arrange for and supervise the prompt reconstruction of such structure, to the extent sufficient Common Property is available, with such improvements or modifications it deems appropriate, unless 80% of the Owners vote not to do so.

If proceeds from the condemning authority are not sufficient to defray the Board's estimated or actual costs of reconstruction, including, but not limited to, any professional fees and premiums for construction bonds the Board deems necessary, the Board may levy a special assessment against all Owners without the necessity of a membership vote or compliance with any other requirements for approval

of special assessments in this Declaration. Any surplus funds remaining after the reconstruction is completed shall be common funds of the Association to be used as determined by the Board.

## **11. EASEMENTS**

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### **A. General**

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

### **B. Easements for Use and Enjoyment**

Every Owner shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the Occupants of the Owners Unit in and to the Common Property which shall be appurtenant to and shall pass with the title to each Unit, subject to the following:

(1) the right of the Association to suspend the voting rights of an Owner for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, By-Laws or rules and regulations;

(2) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Association or any Owner or the holder of any Mortgage encumbering any Unit in the Community (Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Association, or any Owner or the holder of any Mortgage encumbering any Unit in the Community.);

(3) the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Property;

(4) the right of the Association to dedicate or transfer all or any portion of the Common Property upon the approval of the Owners of at least two-thirds of the Units (other than Association). and the Association;

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

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

### **C. Easements for Encroachment and Overhang**

There is hereby reserved to the Association for the benefit of each Unit a reciprocal appurtenant easement for encroachment and overhang between adjacent Units and between a Unit and adjacent Common Property due to the original construction or the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on such common boundary; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association, other than the Association in the original construction of the Units.

### **D. Easement for Utilities - Association**

There is hereby reserved to the Association a blanket easement upon, across, above and under all property within the Community for access, ingress, egress, installation, alteration, repairing, replacing,

and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television system, or security system which the Association might decide to have installed to serve the Community. The Association or its designee, as the case may be, may install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

**E. Easement for Emergency Entry**

The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and rules, which right may be exercised by any member of the Board, the officers, agents, employees, and managers of the Association and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association, but shall not authorize entry into the interior living space of any Unit without permission of the Owner.

**F. Easement for Association Maintenance**

There is hereby reserved to the Association and its designee, an easement and right across all portions of the Community, to allow the Association to fulfill the maintenance obligations described in this Declaration. This easement shall be exercised with a minimum of interference to the quiet enjoyment of the Owner's property, reasonable steps shall be taken to protect the Owner's property, and any Person causing damage to the Owner's property shall repair the damage at its sole expense. Except for an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. It is intended that this right of entry include (and this right of entry shall also include) the right of the Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event that an Owner fails or refuses to cure the condition upon request from the Board.

**12. AUTHORITY AND ENFORCEMENT**

**A. Compliance with Association Legal Documents**

All Owners, Occupants and their guests shall comply with the Association Legal Documents, provided that only Covenant Members and occupants and guests of Covenant Units shall be required to comply with Paragraph 14 hereof. The Association, and in an appropriate case, one or more aggrieved Owners, may take action to enforce the terms of the Association Legal Documents to which a Violator is bound directly against all Violators. However, if an Owner's family member, guest or Occupant violates the Association Legal Documents to which such Violator is subject, the Association, in its sole discretion, is permitted to enforce the terms of the Association Legal Documents against: (1) only the Owner; (2) only the violating family member, guest or Occupant; or (3) both the Owner and the violating family member, guest or Occupant. Notwithstanding anything herein to the contrary, the Owner of the Unit is always ultimately responsible for his or her own actions and the actions of all family members, Occupants and guests of such Unit.

Nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed independently for relief from interference with his or her personal or property rights against a Person violating the Association Legal Documents. The Board of Directors may, in its discretion, require the aggrieved Owner or Occupant to independently pursue all available remedies under Georgia law against the Violator before the Association intervenes and commences enforcement action against such Violator.

**B. Types of Enforcement Actions**

In the event of a violation of the Association Legal Documents, the Association shall have the power to take any or all of the following actions separately or simultaneously; provided, however, all suspensions

and fines shall comply with the procedures described below and nothing herein shall authorize the Association or the Board to deny ingress and egress to or from a Unit:

- (1) Suspend all Violators' rights to use the Common Property;
- (2) Suspend the voting rights of a violating Owner;
- (3) Impose reasonable fines against all Violators, which shall constitute a lien on the violating Owner's Unit;
- (4) Use self-help to remedy the violation;
- (5) Bring an action for permanent injunction, temporary injunction and/or specific performance to compel the Violator to cease and/or correct the violation; and
- (6) Record in the DeKalb County land records a notice of violation identifying any uncured violation of the Association Legal Documents regarding the Unit.

#### **C. Suspension and Fining Procedure**

Except as provided below, before imposing fines or suspending right to use the Common Property or the right to vote, the Association shall give a written violation notice to the Violator as provided below.

##### **(1) Violation Notice**

The written violation notice to the Violator shall:

- (a) Identify the violation, suspension(s) and/or fine(s) being imposed; and
- (b) Advise the Violator of the right to request a violation hearing before the Board of Directors to contest the violation or request reconsideration suspension(s) or the fine(s).

Notwithstanding the Violator's right to request a violation hearing, suspension(s) and/or fine(s) shall commence on the date of the written violation notice, unless a later date is specified in such notice.

##### **(2) Violation Hearing**

If the Violator submits a written request for a violation hearing within 10 days of the date of the violation notice described above, then the Board of Directors shall schedule and hold, in executive session, a violation hearing. If a Violator fails to timely request a violation hearing, such Violator loses the right to contest the violation and request reconsideration of the suspension(s) and/or the fine(s). If a Violator timely requests a violation hearing, the Violator shall have a reasonable opportunity to address the Board regarding the violation; provided, however, the Board may establish rules of conduct for the violation hearing, including but not limited to, limits on the amount of time one person can speak and limits on the number of participants who may be present at one time. The minutes of the violation hearing shall contain a written statement of the results of such hearing.

##### **(3) No Violation Notice and Hearing Required**

No violation notice or violation hearing shall be required to:

- (a) impose late charges on delinquent assessments;
- (b) suspend a violating Owner's voting rights if the Violator's Unit is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violating Owner's right to vote shall be automatic and shall continue until the violation no longer exists or the Board of Directors otherwise reinstates such rights in writing;
- (c) suspend a Violator's right to use the Common Property if the Violator's Unit is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the Violator's right to use the Common Property shall be automatic (which shall allow the Association to tow and/or boot a Violator's vehicle located on the Common Property without complying with the Suspension and Fining Procedures described above);
- (d) Engage in self-help in an emergency;
- (e) Impose fines for each day of a continuing violation, in which case, each day the violation continues or occurs again constitutes a separate violation and fine(s) may be imposed on a per diem basis without any further notice to the Violator; or
- (f) impose fines if the same violation occurs again on the same Unit, in which case fine(s) may be imposed on a per diem basis without any further notice to the Violator.

#### **D. Self-Help**

In addition to all other enforcement rights granted herein, the Board of Directors may elect to enforce any provision of the Association Legal Documents by self-help without the necessity for compliance with the Suspension and Fining Procedures described above.

By way of example and not limitation, the Association or its duly authorized agent shall have the authority to tow vehicles that are in violation of parking regulations and enter a Unit or any portion of the Common Property to abate or remove any structure, thing or condition that violates the Association Legal Documents. Unless an emergency exists, before exercising self-help, the Association shall give the Violator at least three days prior written notice. Such notice shall request that the Violator remove and abate the violation and restore the Unit to substantially the same condition that existed prior to the structure, thing or condition being placed on the Unit and causing the violation. Such removal, abatement and restoration shall be accomplished at the Violator's sole cost and expense. If the same violation occurs again on the same Unit, the Association may exercise self-help without any further notice to the Violator.

#### **E. Injunctions and Other Suits at Law or in Equity**

All Owners agree and acknowledge that there may not be adequate remedies at law to enforce the Association Legal Documents. Therefore, in addition to all other enforcement rights granted herein, the Association is hereby entitled to bring an action for permanent injunction, temporary injunction and/or specific performance to compel a Violator to cease and desist and/or correct any violation.

#### **F. Costs and Attorney's Fees for Enforcement Actions**

In any action taken by the Association to enforce the Association Legal Documents, the Association shall be entitled to recover from the Violator, any and all costs incurred by the Association, including but not limited to attorneys' fees actually incurred, all of which shall constitute a lien against the violating Owner's Unit.

#### **G. Failure to Enforce**

The Board of Directors has the sole discretion to decide which, if any, enforcement action to pursue against each Violator. The failure of the Board to enforce any provision of the Association Legal Documents shall not be deemed a waiver of the right of the Board to do so thereafter. No right of action shall exist against the Association for failure to enforce if the Board of Directors determines that:

- (1) the Association's position is not strong enough to justify taking enforcement action;
- (2) a particular violation is not of such a material nature as to be objectionable to a reasonable person;

(3) a particular violation is not of such a material nature to justify the expense and resources to pursue or continue to pursue enforcement action; or

(4) the aggrieved Owner or Occupant asserting a failure of enforcement has not independently pursued all available individual remedies under Georgia law.

### **13. AMENDMENTS**

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#### **A. Member Approval Procedure**

Except where a higher vote is required for action under any other provisions of this Declaration, the By-Laws or by the Act, this Declaration may be amended with the approval of Owners holding at least two-thirds (2/3rds) of the Total 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.

#### **B. 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 this Declaration or the 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.

Votes on all proposed amendments shall be by written ballot. Pursuant to the Bylaws and Section 44-3-708 of the Georgia Non-Profit Code, in order to be counted, the number of ballots that must be returned must equal or exceed the quorum requirement. If that number of ballots is not received by the deadline, the amendment is automatically defeated.

The Board shall issue an initial notice of all proposed amendments to each Owner. With such notice, the Board shall include a copy of the proposed amendment, along with a ballot, which complies with the requirements of the Bylaws. Each such ballot shall give Owners an opportunity to vote for, vote against or abstain from voting on the proposed amendment. The ballot shall state a date by which it must be returned to be counted.

If sufficient ballots are returned to equal or exceed the quorum, but sufficient votes are not cast to either approve or disapprove the amendment, then if at least a majority (51%) of the ballots favor the adoption of the amendment, the Board may seek to obtain default approval from Owners under this subparagraph. In such case, the Board shall send a second notice, by regular and certified mail to the address consistent with the notice provision of the Bylaws, to all Owners who did not return a ballot by the due date. This notice also shall include a ballot, as provided above, along with a statement that the Owner's failure to return an executed 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 notice, will be deemed to consent to such amendment. If the Board still does not receive such ballot within that 30-day period, the Owner shall be deemed to have consented to and approved the amendment. The Board shall send a third notice to the Owner notifying the Owner his/her ballot was cast in favor of the amendment.

#### **C. Eligible Mortgage Holder Approval**

In addition to approval by the Owners as provided above, material amendments to this Declaration and the By-Laws must be approved by Eligible Mortgage Holders who represent at least 51% of the votes of Units 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.

#### **D. 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 this Declaration and the By-Laws 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"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA"), or to resolve conflicts between this Declaration, the By-Laws, the Articles, and applicable laws.

#### **E. Validity of Amendments**

No Person shall be permitted to bring any legal action to challenge the validity of an amendment to this Declaration or the By-Laws more than one year after the recording thereof in the DeKalb County, Georgia land records.

### **14. ADDITIONAL COVENANTS**

#### **A. Owner's Maintenance Responsibility**

Except for maintenance performed on a Unit by the Association pursuant to Paragraph 8 hereof, all maintenance of the Unit and all structures and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Unit in a manner consistent with this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; maintaining, repairing and replacing the Unit roof, roof systems, roof flashing, roof surfaces; maintaining, repairing and replacing the Unit foundations and footings, with the exception of the exterior of foundation walls; replacing the light bulbs in exterior lighting fixtures pertaining to his/her Unit; keeping in a neat, clean and sanitary condition his or her Unit and any porch, deck, or balcony serving his or her Unit; keeping improvements in good repair and working order; complying with all governmental health and police requirements; repair of damage to improvements; and maintaining, repairing and replacing all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit located within the Unit's boundaries or, if located outside the Unit's boundaries, the portion of the pipe from the cutoff valve serving the Unit (including all gas, electricity, water, sewer and air conditioning pipes, lines, ducts, conduits and other apparatus and the cut off valves for same serving only the Unit). The Unit Owner shall also be responsible for maintenance, repair and replacement of the lock and key(s) to the mailbox pertaining to his or her Unit located in the Common Property mail kiosk.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard. The Board of Directors may establish, interpret and enforce maintenance standards for the Common Property and Covenant Units. These standards may vary over time, however, the variances shall not constitute a waiver by the Board of the right to establish and enforce maintenance standards. No Board decision or interpretation regarding maintenance standards shall constitute a binding precedent with respect to subsequent Board decisions or interpretations.

In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement and all costs thereof shall be assessed against the Owner and the Unit as a specific assessment.

If the Board of Directors determines that any Owner has failed or refused to discharge properly his or her maintenance, repair or replacement obligations pursuant to this Paragraph, then the Association shall give the Owner written notice of: (1) the Owner's failure or refusal; (2) the Association's right to provide necessary maintenance, repair, or replacement at the Owner's sole cost and expense; and (3) the maintenance, repair, or replacement deemed necessary by the Board.

Unless the Board determines that an emergency exists or a violation is re-occurring for which notice previously has been issued hereunder, the Owner shall have 10 days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within 10 days. If the Board determines that an emergency exists, a violation is re-occurring for which notice has been previously issued hereunder or an Owner has not complied with the demand given by the Association hereunder, the Association may provide any such maintenance, repair or replacement, the costs of which shall be a specific special assessment against the Owner and the Unit.

#### **B. Architectural Controls**

##### **(1) Architectural Review Committee**

The Architectural Review Committee ("ARC") shall constitute a standing committee of the Association. The ARC shall consist of the Board of Directors unless the Board of Directors delegates to other Persons the authority to serve on the ARC.

##### **(2) Limitation on Exterior Modifications**

Except as otherwise provided herein, no Owner, Occupant, or any other person may, without written approval of the Board or ARC:

- (1) construct any dwelling or other improvement of a Unit;
- (2) make any change or alteration that affects the exterior appearance of the Unit; or
- (3) erect, place or post any object or thing on the Unit that affects the exterior appearance of the Unit.

Additionally, no modification shall encroach onto the Common Property unless expressly approved in writing by the Board.

##### **(3) Standards and Interpretation**

The Board of Directors may establish, amend and publish written Community-Wide Standards for modifications that affect the exterior appearance of Units. These standards may vary for different parts of the Community, based on street visibility and location of the proposed modification or Unit. Any standards established by the Board hereunder may be amended or vetoed by a majority of the total Association vote. No Board decision or interpretation regarding such standards shall constitute a binding precedent with respect to subsequent Board decisions or interpretations.

##### **(4) Application Process and Review**

The Board of Directors may establish procedures, forms, conditions and requirements for the submission of applications for modifications to the exterior appearance of a Unit. Such applications shall be in writing and, unless otherwise provided by the Board, submitted to the ARC. If the application requests any variance from provisions of this Declaration or published Community-Wide Standards related to the exterior appearance of the Unit, the Owner must expressly identify such variance in the application. No approval issued hereunder shall authorize such a variance unless that variance is expressly identified in the application and specifically approved in writing by the Board or ARC.

Except as may otherwise be determined by the Board, the ARC or its designated representative shall be the sole arbiter of such application.

The standard for approval of such modifications shall include, but not be limited to: (1) aesthetic consideration; (2) materials to be used; (3) compliance with the Community-Wide Standards, this Declaration, or the design standards which may be established by the Board; (4) harmony with the external design of the existing dwellings, Units and structures, and the location in relation to surrounding structures



and topography; and (5) any other matter deemed to be relevant or appropriate by the Board or ARC. The Board or ARC shall approve any request that it determines, in its reasonable discretion, to be in substantial compliance with such standard for approval.

**(5) Ruling on Application**

If the Board or ARC fails to approve or to disapprove such application within 45 days after the application and all required information have been submitted, the Owner submitting the application may issue written notice, via certified mail, to the Association President, informing the President of the Owner's intent to proceed with the modification as identified in the application. Unless the Association issues a written disapproval of the application within 10 days of receipt of the Owner's notice, the approval will not be required and this subparagraph will be deemed complied with as to the items specifically identified in the application. However, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any modification that is otherwise in violation of the Association Legal Documents, or of any applicable zoning or other laws. Except as provided in this subparagraph, no approval of a modification shall be valid unless issued in writing. Owners may not rely on any verbal approval or statements from any person as the approval required for a modification.

**(6) Appeal**

If the ARC does not consist of the Board of Directors, and the ARC disapproves any application or part thereof, an Owner may, in writing, appeal the ARC's decision to the Board. The notice of appeal must be sent to the Board by certified mail and received by the Board within 14 days from the date of the ARC's disapproval notice, or the decision of the ARC shall become final and all rights of appeal shall terminate. Within 45 days of receipt of a timely appeal, the Board shall approve, disapprove, or conditionally approve the Owner's application, and such ruling shall be final and binding on the Owner.

**(7) Commencement and Completion of Construction**

All modifications approved hereunder must be commenced within six months from the date of approval, or such approval shall be deemed revoked, unless the Board or ARC gives a written extension for commencing the work. All work approved hereunder shall be completed in its entirety within six months from the date of commencement, unless otherwise agreed in writing by the Board or ARC.

**(8) Professional Consultants and Fees**

The Board of Directors shall be authorized to charge, as a specific assessment, against any Owner and Unit: (1) a reasonable administrative fee for review of modifications on, or submitted plans for, such Unit; and (2) reasonable fees for any architect, engineer or other professional consultant engaged by the Board to assist with review of modifications on, or submitted plans for, such Unit. Any professional consultants fees shall constitute specific assessments as described in this Declaration.

**(9) Limitation of Liability**

The Association, Board of Directors, ARC, and members thereof, are not responsible for ensuring, and shall not be held liable for any injury, damage or loss arising out of: (1) the quality, structural integrity or soundness of any modification on a Unit; or (2) any modification's compliance with building codes, zoning regulations or other governmental requirements.

**C. Use Restrictions Applicable to Covenant Units**

Each Covenant Owner shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of the Association Legal Documents. In addition to the following use restrictions, the Board of Directors may establish rules and regulations governing the use of Covenant Units in accordance with the terms hereof and as specified in the By-Laws.

**(1) Residential Use**

Each Covenant Unit shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Covenant Unit or any portion of the Common Property, except that the Owner or Occupant residing in a dwelling on a Unit may conduct ancillary business activities within the dwelling so long as:

(1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the dwelling;

(2) the business activity does not involve visitation or deliveries to the Unit by employees, clients, customers, suppliers, couriers, mail carriers, or other business invitees in greater volume than would normally be expected for a Unit without business activity;

(3) the business activity does not involve use of the Common Property, except for necessary access to and from the Unit by permitted business invitees;

(4) the business activity is legal and conforms to all zoning requirements for the Community;

(5) the business activity does not increase any insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage; and

(6) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other Owners or Occupants, as determined in Board of Director's discretion.

The Association has no liability for any business activity in the Community. The Association also has no liability for any action or omission by it, its Directors, Officers, agents, representatives and/or vendors, that may adversely impact an Owner's or Occupant's business activity. Each Owner and Occupant hereby releases and holds harmless the Association, its Directors, Officers, agents, representatives and/or vendors, for any interruption or suspension of, or any damages to, any business activities conducted on a Unit. Owners and Occupants shall obtain whatever supplemental insurance may be necessary to protect their business assets, business continuity and business interests on their Units. The Association is not obligated to obtain any insurance coverage for any Owner's or Occupant's business activity.

The term "business," as used in this provision, shall include, without limitation, any occupation, work or activity that involves the provision of goods or services to persons other than the provider's family for a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore.

**(2) Occupancy – Number of Occupants**

No more than two Occupants per bedroom are permitted in the dwelling on a Covenant Unit, as such bedrooms are depicted on the plans for such dwelling approved by the applicable governmental agency. This occupancy restriction shall not apply to require the removal of any person lawfully occupying a dwelling on the Effective Date hereof. Upon written application, the Board of Directors shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988.

**(3) Subdivision of Units**

No Unit may be subdivided into a smaller Unit or consolidated with another Unit into a larger Unit without the prior written approval of the Board of Directors.

**(4) Pets**

No Covenant Owner or Occupant of a Covenant Unit may keep any animals other than a reasonable number of generally recognized household pets in the Community, as determined in the sole discretion of the Board of Directors. No Owner or Occupant of a Covenant Unit may keep, breed or maintain any pet for any commercial purpose in the Community. Pets may not be left unattended outdoors. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors. Feces left by pets on the Common Property or on any Unit must be removed promptly by the owner of the pet or the person responsible for the pet.

No potbellied pigs, poultry or livestock of any kind are permitted on the Common Property or in any Covenant Unit. No animals that the Board determines to be dangerous may be brought onto or kept in the Common Property or in any Covenant Unit. If the Board determines that a Owner's or Occupant's pet endangers any person or other pet or creates a nuisance or unreasonable disturbance in the Community, the Board may require that the pet be permanently removed from the Community upon seven days' written

notice to such Owner or Occupant. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet and/or obtain a court order requiring the Owner or Occupant to do so. Notwithstanding the above, the Board may remove any pet without prior notice to the pet's owner if, in the Board's sole discretion, the pet presents an immediate danger to health, safety or property in the Community.

Any Owner or Occupant who keeps or maintains any pet in the Community agrees to indemnify and hereby holds harmless the Association, its Directors, Officers, and agents, from any loss, damage, claim or liability of any kind or character whatsoever related to such pet. The Board may establish additional rules regarding pets in the Community, which may include restrictions on the breeds, number and/or size of permitted pets.

#### **(5) Parking**

No Covenant Owner or Occupant of a Covenant Unit may keep or bring into the Community more than a reasonable number of vehicles per Unit, as determined in the sole discretion of the Board of Directors. Notwithstanding the foregoing, an Owner or Occupant of a Unit shall be permitted to park the maximum number of cars or similarly sized motor vehicles that can be parked in a garage according to its design capacity. Parking may also be permitted on other areas authorized in writing by the Board. Vehicles may not be parked on any sidewalks, curbing, grass or landscaped areas on Common Property. Vehicles may not be parked on Community streets except in areas designated for parking by the Board and in accordance with any rules and regulations promulgated by the Board with regard to parking on Community streets.

Disabled and stored vehicles are prohibited from being parked in the Community, except in garages. For purposes of this subparagraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains in the Community, other than in a garage, for 14 consecutive days or longer without prior written consent of the Board.

Boats, jet-skis, trailers, buses, taxis, hearses, limousines, recreational vehicles, motor homes, campers, panel trucks, trucks with a cargo-load capacity of one ton or more, full-size vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), vehicles containing visible evidence of commercial use (such as tool boxes, tool racks, ladders, ladder racks or tow winches), and vehicles with commercial writings on their exteriors (except for law enforcement vehicles marked as such) are also prohibited from being parked in the Community, except: (1) in garages or as otherwise approved by the Board; or, (2) in the case of service vehicles, on a temporary basis during daytime business hours or during emergencies for the purpose of serving a Unit. The Board may establish additional rules regarding vehicles and parking in the Community, which may include restrictions on the number of vehicles which may be parked in the Community.

If any vehicle is parked in the Community in violation of this Paragraph or the Association's rules, the Board or agent of the Association may tow or boot the vehicle after 24 hours written notice. Such notice shall: (1) be placed on the vehicle; (2) specify the nature of the violation; (3) warn of possible towing or booting; and (4) state the name and telephone number of a person to contact regarding the violation. If 24 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the Board or agent of the Association may have the vehicle towed or booted in accordance with the original notice and without further notice. If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Unit or dwelling, is obstructing the flow of traffic, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

Overnight guest vehicles shall be parked only in parking areas serving the Unit and shall not be parked on private Community streets except in areas designated for such parking by the Board and in accordance with any rules and regulations promulgated by the Board with regard to guest parking on Community streets.

The Association has no liability for any towing or booting in accordance with this subparagraph. Each Owner and Occupant hereby releases and holds harmless the Association, its Directors, Officers, agents and representatives, for any claim or damage from any such towing or booting. The Association's

right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines.

**(6) Signs**

Except as may be provided for herein or as may be required by legal proceedings or any governmental construction permitting process, no signs, advertising posters, political placards or billboards of any kind shall be erected, placed, or permitted to remain in the Community without the prior written consent of the Board of Directors or ARC, other than: (1) two professional security signs not to exceed six inches by six inches each in size displayed within a window of a Unit; and (2) one professionally lettered "For Sale" sign not to exceed 24" by 30" in size or one approved professional real estate sign displayed within a window of a Unit being offered for sale. The Board may establish rules permitting temporary signs on Units announcing open houses, births, birthdays or other events for limited periods of time. The Board shall have the right to erect signs on the Common Property.

**(7) Air Conditioning Units**

Except as may be permitted by written consent of the ARC, no window air conditioning units may be installed.

**(8) Energy and Water Collection Devices**

No artificial or man-made device which is designed or used for collection of energy or water, or heating by solar energy or for similar purposes, shall be placed, allowed or maintained upon any portion of a Unit, without the prior written consent of the Board. Such devices referenced herein shall include, but not be limited to, solar panels, windmills and rain barrels.

**(9) Rubbish and Trash**

Owners and Occupants shall regularly remove all rubbish and trash from the Unit. No rubbish or trash shall be placed on the Common Property. Rubbish and trash shall be disposed of in appropriate sealed bags and placed in proper receptacles for collection. No Owner or Occupant shall be permitted to place any garbage can, recycling bin, trash bag or any other form of rubbish outside of the Unit except in such locations as designated by the Board and in accordance with any timeframes established by the Board for scheduled garbage or recycling pickup. All such garbage, trash and rubbish receptacles shall be placed inside the Unit after such scheduled garbage or recycling pickup within the timeframe set by the Board.

The Board may establish additional rules regarding proper rubbish/trash disposal procedures and placement of trash cans for pick-up and/or storage, including establishing schedules for trash can placement and trash pickup.

No construction dumpsters shall be permitted in the Community, except with the prior written permission of the Board and in such location(s) as permitted by the Board in writing.

**(10) Unsightly or Unkempt Conditions**

Owners and Occupants are prohibited from engaging in activities which cause disorderly, unsightly or unkempt conditions on the Common Property or outside of a dwelling in the Community, such as the assembly and disassembly of motor vehicles and other mechanical devices. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling. No clotheslines shall be permitted.

Only appropriate outdoor items, such as neatly stacked firewood, potted plants, patio furniture and grills may be kept outside the dwelling on any Unit; provided that in no event may such items be placed on Common Property. Owners and Occupants shall maintain such items in a neat and attractive condition, as determined in the Board's sole discretion.

**(11) Impairment of Easements**

No Owner or Occupant shall impair any easement existing in the Community, or do any act or allow any condition to exist which will adversely affect the other Units or their Owners or Occupants.

**(12) Yard Sales**

No yard sale, garage sale, flea market, estate sale or similar activity shall be conducted in the Community without the prior written consent of the Board of Directors and subject to all reasonable conditions that the Board may impose.

**(13) Garages**

Owners and Occupants should park their cars and other motor vehicles in the garage. Garage doors also should remain closed when not in use for ingress, egress or garage use, or when the Owner or Occupant is not immediately outside of the Unit on the Common Property. Garage conversions are prohibited. The Board may establish additional rules regarding garages.

**(14) Window Treatments**

Unless otherwise approved in writing by the Board of Directors, all windows on a dwelling on a Unit which are exposed to a street or another dwelling shall have customary and appropriate window treatments. Window grids (mullions) and screens must remain on all windows and kept in good repair at all times. The Board may establish additional rules regarding window treatments, such as requirements for the location and type of treatment. All portions of the window treatments that are visible from the street must be white or off-white in color. All window screens, divider slats and grids (mullions) must be maintained and in good order and repair. Glass in garage door windows must be clear glass or non-reflective black window tint.

**(15) Antennas and Satellite Dishes**

Except as provided below or otherwise approved by the Board of Directors, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors in any portion of the Community. Direct broadcast satellite ("DBS") antennas and multi-channel multi-point distribution services ("MMDS") one meter or less in diameter and television broadcast service antennas may be installed in accordance with rules and regulations of the Federal Communication Commission ("FCC") and the ARC. Any such devices, including cabling therefor, shall be installed in the least conspicuous location available on the Unit roof that permits reception of an acceptable quality signal and shall be properly grounded.

**(16) Grills and Grilling**

The use of outdoor grills on any portion of the Community building(s), including, without limitation, a deck, shall be governed by applicable state laws and local ordinances having jurisdiction over the Community. The Board shall have authority to promulgate rules governing the use and placement of grills on decks, including but not limited to rules governing the type, placement and use of grills. Grills may not be kept or maintained on any front balconies or porches.

**(17) Balconies, Porches and Decks**

Objects over forty-two (42) inches in height, firewood, plastic plants, grills, bicycles, laundry garments, towels and objects other than potted plants and patio furniture, except as may be authorized by the Board, shall not be placed on a balcony, porch or deck. Provided, however, that grills and a reasonable amount of firewood may be kept on decks only, in accordance with any rules and regulations established by the Board. Objects shall not be permitted to hang over or be attached to any exterior balcony, porch or deck or to otherwise protrude outside of the vertical plane formed by the exterior surface of the balcony, porch or deck wall.

**(18) Heating of Units in Colder Months; Cooling of Units in Warmer Months.**

In order to prevent breakage of water pipes during colder months of the year resulting in damage to the Community, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained at a setting of no less than fifty five (55) degrees Fahrenheit and no more than eighty-two degrees (82°) Fahrenheit (except during power failures or periods when heating/air conditioning equipment is broken).

Owners and Occupants of Units shall take all steps possible on a timely basis to keep heating/air conditioning equipment, including, but not limited to, the thermostat, in good working order and repair. All Owners and Occupants of Units also shall be obligated to shut any and all cut-off valves for any and all

outdoor spigots whenever the temperature is forecasted to or does reach thirty-two (32) degrees Fahrenheit or below. Notwithstanding any provision in this Declaration or in the Bylaws to the contrary, the Board of Directors, without a prior warning, demand or hearing, may fine any Owner or Occupant in an amount up to twice the then-current monthly assessment applicable to that Unit or may cause the water service to the violator's Unit to be discontinued for violation of this Section, in addition to any other remedies of the Association. Any fine imposed pursuant to this Paragraph shall be deemed an assessment against the Unit and may be collected in the same manner as provided herein for collection of assessments.

**(19) Prohibition of Damage, Nuisance and Noise**

Without prior written Board consent, nothing shall be done or kept in the Community or any part thereof which would increase the rate of insurance on the Community, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

Noxious, destructive, offensive or unsanitary activity shall not be carried on upon the Community. No Owner or Occupant may use or allow the use of the Unit at any time, in any way, which may endanger the health or property of other Occupants, unreasonably annoy, disturb or cause embarrassment or discomfort to other Owners or Occupants, or, in the Board's discretion, constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Occupants a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment of the Community.

However, nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed individually against a violator hereof for relief from interference with his or her property or personal rights, and the Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their personal property rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or otherwise shall exist by an aggrieved Owner or Occupant against the Association for failure to enforce the provisions hereof if the aggrieved Owner or Occupant has not personally pursued all available remedies against the violator for redress provided under Georgia law.

No Owner, Occupant or agent of such Owner or Occupant shall do any work which, in the Board's reasonable opinion, would jeopardize the soundness or safety of the Community or any structure thereon, would reduce the value thereof, or would impair any easement or other interest in the Community, without prior written consent of all Association members and their Mortgagees.

**D. LEASING AND OCCUPANCY**

To preserve the character of the Community as predominantly owner-occupied, the Leasing of Units is prohibited, except as provided herein.

**(a) Definitions.**

(i) "Effective Date" means the date this Amendment is recorded in the DeKalb County, Georgia land records.

(ii) "Grandfathered Owner" means an Owner of a Unit who is lawfully leasing his or her Unit on the Effective Date. Grandfathering shall apply only to the Unit owned by such Grandfathered Owner on the Effective Date. Except as otherwise provided in this Paragraph below, grandfathering hereunder shall continue only until the earlier of: (1) the date the Grandfathered Owner conveys title to the Grandfathered Unit to any other person (other than the Owner's spouse); (2) the date that all current occupants of the Grandfathered Owner's Unit vacate and cease to occupy the Unit; or (3) any renewal, modification or extension of the existing lease. In addition to the foregoing, any Owner who fails to provide a copy of his or her lease in effect on the Effective Date hereof within thirty days after the Effective Date shall also automatically lose his or her grandfathering status.

Notwithstanding the foregoing, any Grandfathered Owner, who, on the Effective Date, owns two or more Units in the Community and occupies one of such Units as his or her primary residence, said Owner shall be entitled to continue to lease such Units until such time as he or she ceases to own or occupy the occupied Unit. Upon the happening of such event, the Owner shall automatically lose his or her grandfathering status and must apply for a leasing permit or a hardship leasing permit as further specified below to continue leasing any Units.

(iii) "Grandfathered Unit" means the Unit owned by a Grandfathered Owner on the Effective Date hereof.

(iv) "Leasing" means the occupancy of a Unit by any person(s) other than: (1) the Owner or a parent, child or spouse of an Owner (collectively referred to as "Authorized Occupant"); (2) an Authorized Corporate Occupant (defined below); or (3) a roommate of an Authorized Occupant or Authorized Corporate Occupant, when the Authorized Occupant or Authorized Corporate Occupant also occupies the Unit as his or her primary residence. An Authorized Corporate Occupant shall be an officer, director, shareholder, member or employee of an Owner that is a corporation; a manager or member of an Owner that is a limited liability company; a partner of an Owner that is a partnership; or a trustee or beneficiary of an Owner that is a trust; provided the Owner receives no rent or other consideration for such occupancy. The name of each Authorized Corporate Occupant shall be designated in writing to the Board and may not be changed more frequently than once every 12 months without the Board's written consent. A person's designation as an Authorized Corporate Occupant shall terminate automatically upon the termination of such person's relationship with the entity holding record title to the Unit.

(b) **Leasing Permit and Restriction**. No Owner of a Unit may lease his or her Unit unless: (1) the Owner is a Grandfathered Owner, (2) the Owner is not a Grandfathered Owner but has received a written leasing permit from the Board of Directors authorizing leasing, or (3) the Owner is not a Grandfathered Owner but has received a hardship leasing permit from the Board as provided below.

Non-Grandfathered Owners who want to lease their Units may do so only if they have applied for and received from the Board of Directors either a "Leasing Permit" or a "Hardship Leasing Permit." Such a permit will allow an Owner to lease his or her Unit, provided that such leasing is in strict accordance with the terms of the permit and this Paragraph. The Board of Directors shall have the authority to establish conditions as to the duration and use of such permits consistent with this Paragraph. All Leasing Permits and Hardship Leasing Permits shall be valid only as to a specific Owner and Unit and shall not be transferable between either Units or Owners (including a subsequent Owner of a Unit where a permit was issued to the Owner's predecessor-in-title).

An Owner's request for a Leasing Permit shall be approved if the number of current, outstanding Leasing Permits issued (including Grandfathered Units) is less than twenty-five (25%) percent of the Covenant Units. Provided, however, that notwithstanding anything to the contrary herein, Board may refuse to issue a Leasing Permit to any Owner if the Owner's Unit 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 Owner or Occupant is in violation of the Declaration, Bylaws or rules and regulations of the Association.

If the number of current Leasing Permits issued to Covenant Units (including Grandfathered Units) is equal to or greater than twenty-five (25%) percent of the Covenant Units, then no additional Leasing Permits shall be issued (except for Hardship Leasing Permits) until that number falls below twenty-five (25%) percent of the Covenant Units. Owners who have been denied a Leasing Permit shall automatically be placed on a waiting list for a leasing permit and shall be issued a Leasing Permit, if they so desire, when such number falls below twenty-five (25%) percent of the Covenant Units. The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the waiting list for a Leasing Permit.

(c) **Hardship Leasing Permits**. If the failure to lease will result in an undue hardship to the Owner, then the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a Hardship Leasing Permit. The Board shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship, (2) the harm, if any, which will result to the Community if the permit is approved, (3) the number of hardship leasing permits which have been issued to other Owners, (4) the Owner's ability

to cure the hardship, and (5) whether previous hardship leasing permits have been issued to the Owner. The Board may also deny an Owner's request for a Hardship Leasing Permit if the Owner's Unit 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 Owner or Occupant is in violation of the Declaration, Bylaws or rules and regulations of the Association.

By way of illustration, and not by limitation, examples of circumstances which may constitute "undue hardship", in the Board's sole discretion, are those in which: (1) an Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six (6) 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) an Owner dies and the Unit is being administered by his or her estate; or (3) an Owner takes a leave of absence or temporarily relocates out of the metropolitan-Atlanta area and intends to return to reside in the Unit within one (1) year.

(d) **Expiration and Revocation of Permits.** All Leasing and Hardship Leasing Permits have a limited duration. The Leasing Permit issued to a Non-Grandfathered Owner shall automatically expire after three (3) years (1095 days) of occupancy by a tenant or tenants. In calculating the three (3) years, the time a Unit is unoccupied by a tenant(s) shall not be counted. Provided, however, that notwithstanding anything herein or in the Permit to the contrary, all Leasing Permits shall, in all instances, expire no later than forty-five (45) months after the date of their issuance.

Unless otherwise determined by the Board in writing, Hardship Leasing Permits granted after the Effective Date shall be valid for a term not to exceed one (1) year.

Leasing Permits and Hardship Leasing Permits are automatically revoked upon the happening of the following events: (1) the sale or transfer of the Unit to a third party (excluding sales or transfers to a Unit Owner's spouse); (2) the failure of a Unit Owner to lease his or her Unit for 90 consecutive days at any time after the issuance of such permit; or (3) the occupancy of the Unit by the Owner. The Board also shall have the power to revoke any Leasing Permit or Hardship Permit issued to any Owner if the Unit is shown on the Association's books and records to be more than 30 days past due in any assessment or charge and/or if the Owner and/or Occupant is in violation of the Declaration, Bylaws or rules and regulations. A Hardship Permit shall be revoked automatically if, during the term of such permit, the Owner is approved for and receives a Leasing Permit.

A Unit Owner may apply for an additional Leasing Permit or Hardship Leasing Permit at the expiration or revocation of a previous one.

(e) **Leasing Provisions.** When leasing is permitted under this sub-Paragraph, it shall be governed by the following provisions:

(i) **Notice.** At least ten (10) days before entering into a lease, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. If a lease is disapproved, the Board shall notify the Owner of the action to be taken to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

(ii) **General.** Units may be leased only in their entirety; no rooms or fractions of Units may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. There shall be no subleasing of Units or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with: (1) a copy of the executed lease; (2) the Occupants home, work and cellular phone numbers and the make, model and tag number of such Occupants' vehicle(s); (3) the Owner's primary (offsite) residence address, home, work and cellular phone numbers and (4) such other information required by the Board. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.



(iii) Liability for Assessments; Compliance. 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:

(A) Compliance with Declaration, Bylaws, and Rules and Regulations.

The Owner and lessee shall comply with all provisions of the Declaration, Bylaws and Association rules and shall control the conduct of all other occupants and guests of the leased Unit in order to ensure such compliance. The Owner shall cause all occupants of his or her Unit to comply with the Declaration, Bylaws and Association rules, and shall be responsible for all violations by such occupants, notwithstanding the fact that such Occupants are fully liable and may be sanctioned for any such violation.

If a Unit is leased or occupied in violation of this Paragraph or if the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, the Association's Board of Directors shall be authorized, in addition to all other available remedies, to levy fines against the lessee and/or the Owner, to suspend all voting and/or Common Property use privileges of the Owner, Occupants and unauthorized tenant(s) and to suspend all common services to the Unit paid for by the Association as a Common Expense, subject to the provisions of this Declaration and the Bylaws.

If a Unit is leased or occupied in violation of this Paragraph, the Association may require the Owner to evict the tenant. If the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, such violation is deemed to be a default under the terms of the lease and shall authorize the Owner or the Association, as more fully described herein, to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof.

Alternatively, the Association may require the Owner to evict the violating tenant. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Unit.

(B) 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, including, but not limited to, the use of any and all recreational facilities.

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

(f) Lease Administration Fee. As the review process of proposed leases occasions common expenses by the Association, the Board shall have the authority to require a fee of up to one month's installment of the annual assessment applicable to such Unit. Such fee shall be due upon the Board's granting of a leasing or hardship permit (whether initial approval or renewal). Said fee shall constitute a specific assessment.

(g) **Applicability to Certain Lease Agreements** Lease agreements existing on the Effective Date of this Amendment shall be subject to this Paragraph 14(D) but shall not initially be subject to the terms of Paragraph 14, Section D(e)(iii) herein; such lease agreements may continue in accordance with the terms of the Declaration as existed prior to this Amendment. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with Paragraph 14, Section D(e)(iii) above.

The prohibition on leasing as well as the requirements to obtain a leasing or hardship permit shall not apply to any leasing transaction entered into by the Association or a holder of any first mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage. The Association and a holder of any first mortgage on a Unit who becomes the Owner of a Unit through foreclosure or other means pursuant to the satisfaction of the indebtedness secured by such mortgage shall be permitted to lease a Unit without first obtaining a permit in accordance with this Paragraph, and any such Unit shall not be considered as being leased in determining the maximum number of Units that may be leased in accordance with this Paragraph.

#### **E. SALE OF UNITS**

An Owner intending to transfer or sell a Unit or any interest in a Unit shall give the Board of Directors written notice of such intention within seven days after executing the transfer or sales documents. As part of the notice, the current Owner shall furnish the Board the name and address of the intended grantee and such other information required by the Board. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven days after receiving title to a Unit, the purchaser or grantee of the Unit shall give the Board written notice of his or her ownership of the Unit. As part of the notice, the new Owner shall furnish the Owner's name, mailing address and such other information required by the Board. It shall be the responsibility of each Owner, and not the Association, to provide to the purchaser or grantee of his or her Unit the keys to the Unit and Unit mailbox, such garage remotes and codes as are needed to gain access to the Unit garage; the trash can and any recycling bins for the Unit; and copies of the Association Legal Documents.

### **15. GENERAL PROVISIONS**

#### **A. Use Restrictions Applicable to Common Property.**

Each Owner shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of the Association Legal Documents. In addition to the following use restrictions, the Board of Directors may establish rules and regulations for use of the Common Property in accordance with the terms of this Declaration and as specified in the By-Laws.

##### **(1) Firearms and Fireworks.**

The display or discharge of firearms on the Common Property is prohibited, except: (1) by law enforcement officers; and (2) to transport lawful firearms across the Common Property to or from a Unit. The term "firearms" includes, but is not limited to, any device which will or can be converted to expel a projectile by the action of an explosive or electrical charge or by the action of compressed air. Examples of "firearms" as described in this section include, but are not limited to, handguns, rifles, shotguns, stun guns, tasers, "B-B" guns, pellet guns and paintball guns. Additionally, cross-bows and arrows shall be considered a "firearm" pursuant to this Declaration.

The display or discharge of fireworks on the Common Property is likewise prohibited. The term "fireworks" shall include those items as listed in O.C.G.A. Section 25 10 1.

##### **(2) Rubbish and Trash Disposal**

No garbage or trash shall be placed on the Common Property temporarily or otherwise, except as provided herein. Rubbish, trash and garbage shall be disposed of in appropriate sealed bags and placed

in proper trash receptacles for collection. No Owner or Occupant shall be permitted to place any garbage can, recycling bin, trash bag or any other form of rubbish on the Common Property, except in such locations as designated by the Board and in accordance with any timeframes established by the Board for scheduled garbage or recycling pickup. All such garbage, trash and rubbish receptacles shall be placed inside the Unit after such scheduled garbage or recycling pickup within the timeframe set by the Board.

The Board may establish additional rules regarding proper rubbish/trash disposal procedures on the Common Property and placement of trash cans for pick-up and/or storage, including establishing schedules for trash can placement and trash pickup.

No construction dumpsters shall be permitted in the Community, except with the prior written permission of the Board and in such location(s) as permitted by the Board in writing.

### **(3) Parking**

No Owner or Occupant may keep or bring unto the Common Property more than a reasonable number of vehicles per Unit, as determined in the sole discretion of the Board of Directors. Vehicles on the Common Property may only be parked in designated parking spaces, or other areas authorized in writing by the Board. Vehicles may not be parked on any sidewalks, curbing, grass or landscaped areas on Common Property. Vehicles may not be parked on Community streets except in areas designated for parking by the Board and in accordance with any rules and regulations promulgated by the Board with regard to parking on Community streets.

Disabled and stored vehicles are prohibited from being parked on the Common Property. For purposes of this subparagraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains in the Community, other than in a garage, for 14 consecutive days or longer without prior written consent of the Board.

Boats, jet-skis, trailers, buses, taxis, hearses, limousines, recreational vehicles, motor homes, campers, panel trucks, trucks with a cargo-load capacity of one ton or more, full-size vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), vehicles containing visible evidence of commercial use (such as tool boxes, tool racks, ladders, ladder racks or tow winches), and vehicles with commercial writings on their exteriors (except for law enforcement vehicles marked as such) are also prohibited from being parked on the Common Property, except in the case of service vehicles, on a temporary basis during daytime business hours or during emergencies for the purpose of serving a Unit. The Board may establish additional rules regarding vehicles and parking on the Common Property.

Overnight guest vehicles shall not be parked on private Community streets except in areas designated for such parking by the Board and in accordance with any rules and regulations promulgated by the Board with regard to guest parking on Community streets.

If any vehicle is parked on the Common Property in violation of this subparagraph or the Association's rules, the Board or agent of the Association may tow or boot the vehicle after 24 hours written notice. Such notice shall: (1) be placed on the vehicle; (2) specify the nature of the violation; (3) warn of possible towing or booting; and (4) state the name and telephone number of a person to contact regarding the violation. If 24 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the Board or agent of the Association may have the vehicle towed or booted in accordance with the original notice and without further notice. If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Unit or dwelling, is obstructing the flow of traffic, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

The Association has no liability for any towing or booting in accordance with this subparagraph. Each Owner and Occupant hereby releases and holds harmless the Association, its Directors, Officers, agents and representatives, for any claim or damage from any such towing or booting. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines.

**(4) Abandoned Personal Property**

Personal property, except for personal property owned by the Association, is strictly prohibited from being stored, kept, or allowed to remain for a period of more than twenty four (24) hours upon any portion of the Common Property or on the rights-of-way located within the Community. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Property or on the rights-of-way located on the Community in violation of this Section, then the Board may remove and either discard or store the personal property in a location which the Board may determine. If personal property is removed in accordance with this Article, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal 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 remove abandoned or improperly stored personal property, as set forth herein.

**(5) Prohibition of Damage and Illegal Conduct**

Without prior written consent of the Board of Directors, nothing shall be done or kept on the Common Property which would increase the Common Expenses, damage the Common Property, or be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body. Noxious, destructive, offensive, hazardous, or unsanitary activity shall not be carried on anywhere on the Common Property, as such activity or conduct may be defined in the Association's rules and regulations.

Noxious, destructive, offensive or unsanitary activity shall not be carried on upon the Community. No Owner or Occupant may use or allow the use of any portion of the Common Property at any time, in any way, which may endanger the health or property of other Occupants, unreasonably annoy, disturb or cause embarrassment or discomfort to other Owners or Occupants, or, in the Board's discretion, constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Occupants a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment of the Community.

However, nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed individually against a violator hereof for relief from interference with his or her property or personal rights, and the Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their personal property rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or otherwise shall exist by an aggrieved Owner or Occupant against the Association for failure to enforce the provisions hereof if the aggrieved Owner or Occupant has not personally pursued all available remedies against the violator for redress provided under Georgia law.

No damage to or waste of the Common Property, or any part thereof, shall be permitted by any Owner or any Occupant, guest or invitee of any Owner. Each Owner and Occupant shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner or Occupant, or the Owner's or Occupant's guest or invitee.

**(6) Signs**

Except as may be provided for herein or as may be required by legal proceedings or any governmental construction permitting process, no signs, advertising posters, political placards or billboards of any kind shall be erected, placed, or permitted to remain in the Community without the prior written consent of the Board of Directors or ARC. The Board shall have the right to erect signs on the Common Property.

**(7) Pets**

With the exception of generally recognized household pets, as determined in the sole discretion of the Board of Directors, no animals may be brought unto the Common Property. Pets may not be left unattended outdoors. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors. Feces left by pets on the Common Property must be removed promptly by the owner of the pet or the person responsible for the pet.

No potbellied pigs, poultry or livestock of any kind are permitted on the Common Property. No animals that the Board determines to be dangerous may be brought onto the Common Property. If the Board determines that a Owner's or Occupant's pet endangers any person or other pet or creates a nuisance or unreasonable disturbance on the Common Property, the Board may require that the pet be permanently removed from the Common Property upon seven days' written notice to such Owner or Occupant. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet from the Common Property and/or obtain a court order requiring the Owner or Occupant to keep the pet from the Common Property.

Any Owner or Occupant who keeps or maintains any pet in the Community agrees to indemnify and hereby holds harmless the Association, its Directors, Officers, and agents, from any loss, damage, claim or liability of any kind or character whatsoever related to such pet. The Board may establish additional rules regarding pets permitted on the Common Property, which may include restrictions on the breeds, number and/or size of permitted pets.

#### **B. Security**

THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE COMMUNITY DESIGNED TO MAKE THE COMMUNITY SAFER THAN THEY OTHERWISE MIGHT BE. THE ASSOCIATION SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY. THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNIT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD OF DIRECTORS AND ARC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ACC, IF ANY, MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD UP, ASSAULT OR OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY UNIT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, AND COMMITTEES ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF ANY UNIT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS, IF ANY, RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

#### **C. Dispute Resolution**

Before filing any lawsuit or administrative proceeding against the Association, the Board of Directors, any Officer or Director, or the Association's property manager, an Owner or Occupant shall request in writing and attend a meeting with the Board to discuss an amicable resolution of any dispute. The Owner or Occupant shall, in such request and at the meeting, make a good faith effort to explain the grievance and resolve the dispute. Upon receiving a request for a meeting, the Board shall give notice of the date, time and place of the meeting to the person requesting the meeting. The Board shall schedule this meeting for a date not less than seven or more than 30 days from the date of receipt of the meeting request,

except with the approval of the Owner or Occupant. After the meeting, the Board shall have a reasonable opportunity to address the Owner's or Occupant's grievance before a suit is filed.

**D. No Discrimination**

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

**E. Implied Rights**

In addition to express rights, the Association may exercise any right or privilege implied from the existence of any express right or privilege or reasonably necessary to effectuate any such right or privilege.

**F. Electronic Records, Notices and Signatures**

Notwithstanding any other portion of this Declaration, records, signatures and notices shall not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the By-Laws shall govern the giving of all notices required by this Declaration.

**G. Preamble**

The preambles and recitals of this Declaration are by reference made a part of this document as if fully stated herein in their entirety.

**H. Duration**

The covenants and restrictions of this Declaration shall run with and bind the real property in the Community perpetually to the extent provided in the Act.

**I. Severability**

Invalidation of any one of these covenants or restrictions, by judgment, court order, or otherwise, shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

**16. PREPARER**

This Declaration was prepared by Rebecca F. Drube, Weissman, Nowack, Curry & Wilco, P.C., One Alliance Center, 4th Floor, 3500 Lenox Road, Atlanta, Georgia 30326.

IN WITNESS WHEREOF, the undersigned Officers of Stillwood Homeowners Association, Inc., hereby certify that the above amendment to the Original Declaration and the following amendment to the Original By-Laws were duly adopted by the required majority of the Association and its membership, with any required notices duly given.

This 2 day of May, 2014.

Sworn to and subscribed to before  
me this 2 day of May,  
2014.

Robert H. H. A.  
Witness

Vanessa N. Haines  
Notary Public  
[Notary Seal]



**STILLWOOD HOMEOWNERS ASSOCIATION,  
INC.**

By: [Signature] (Seal)  
President

Attest: [Signature] (Seal)  
Secretary

[CORPORATE SEAL]

## EXHIBIT "A"

## LIST OF COVENANT UNITS

Name of Owners	Unit Address
Mark T. Gerrard & Christa Gerrard	1350
Jay Corey King	1324
Brooke Cherven	1326
Chris Cherven	1326
Elizabeth Halkos	1342
Jeffrey C. Phillips & Caitlin Phillips	1337
Joseph W. Grizzle	1312
Ross Jacobs	1311
Raymond A. Miklius & Kathleen R. Miklius	1340
James M. Combs and Julia C. Combs	1306
Leif Larson	1341
James Pleasant Bolling & Elizabeth Kovarik Bolling	1333
Nancy Moore	1304
Stephen Holwerda	1310
Julia Bugrysheva	1336
Jeremy Barrow and Danya Barrow	1332
Scott Cohen and Kimberly S. Cohen	1307
David Lee Heffernan	1308
Laura Ellen Mcan	1316
Kelly Fitzgerald Green	1335
Darian Somers Hopkins	1339
Frances Mary Hodgdon	1313
Michael Button	1315
Alvin H. Rampey, Jr.	1322
Ricardo A. Zertula	1330
Nigel Rodrigues	1328
Charles Vosburgh	1338
Beth Bailey	1331
Richard R. Bush	1309
Kelly Anne Healy	1343
Belinda S. Wedgwood	1346
Belinda S. Wedgwood	1348



**EXHIBIT "B"**

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 1 of the 18<sup>th</sup> District, Dekalb County, Georgia, being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, begin at the intersection of the northeastern right-of-way line of Stillwood Drive (50 foot right-of-way) with the northwestern right-of-way line of Briarcliff Road (60 foot right-of-way); thence along said northwestern right-of-way line of Briarcliff Road North 34° 13' 38" East 115.00 feet to a point; thence North 54° 07' 24" West 20.01 feet to a point; thence North 34° 13' 38" East 110.00 feet to a point, which is the TRUE POINT OF BEGINNING. From said POINT OF BEGINNING thus established, thence North 55° 46' 22" West 78.30 feet to a point; thence North 01° 18' 33" East 88.00 feet to a point; thence South 88° 41' 27" East 210.50 feet to a point; thence South 34° 13' 38" West 155.52 feet to a point, which is the TRUE POINT OF BEGINNING, as shown on As Built Survey Plat for Stillwood Development Company by Farley E. Wolford, Registered Land Surveyor No. 1989, dated December 18, 1987, last revised January 5, 1988, and recorded in Plat Book 86, Page 90, Dekalb County, Georgia records.

AND

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 1 of the 18<sup>th</sup> District, Dekalb County, Georgia, being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, begin at the intersection of the northeastern right-of-way line of Stillwood Drive (50 foot right-of-way) with the northwestern right-of-way line of Briarcliff Road; thence is a westerly way along the northeastern right-of-way of Stillwood Drive 80 feet to a point which is the TRUE POINT OF BEGINNING; thence 162.00 feet through the arc of a circle having a radius of 600.00 feet and being subtended on its southwestern side by a 161.51 foot chord bearing North 63° 28' 39" West to a point; thence North 00° 00' 00" East 218.10 feet to a point on the boundary line of Phase I; thence North 88° 41' 27" West 40.00 feet to a point; thence South 18° 59' 33" West 78.12 feet to a point; thence South 57° 13' 44" East 82.50 feet to a point; thence South 32° 46' 16" shown as Phase II on As Built Survey Plat for Stillwood Development Company by Farley E. Wolford, Registered Land Surveyor No. 1989, dated April 28, 1988, and recorded in Plat Book 87, Page 33, Dekalb County, Georgia records.

AND

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 1 of the 18<sup>th</sup> District, Dekalb County, Georgia, being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, being at the intersection of the northeastern right-of-way line of Stillwood Drive (50 foot right-of-way) with the northwestern right-of-way line of Briarcliff Road; thence in a westerly way along the northeastern right-of-way of Stillwood Drive 80 feet to a point; thence North 32° 46' 16" East 95.38 feet to a point which is the TRUE POINT OF BEGINNING; thence North 57° 13' 44" West 82.50 feet to a point; thence North 18° 59' 33" East 78.12 feet to a point; thence South 88° 41' 27" East 100.26 feet to a point; thence South 55° 46' 22" East 78.30 feet to a point; thence South 34° 13' 38" West 110.00 feet to a point; thence North 54° 07' 24" West 59.97 feet to a point; thence South 32° 46' 16" West 19.50 feet to a point which is the POINT OF BEGINNING, as shown as Phase III on As Built Survey Plat for Stillwood Development Company by Farley E. Wolford, Registered Land Surveyor No. 1989, dated June 30, 1988, and recorded in Plat Book 87, Page 94, Dekalb County, Georgia records.

**EXHIBIT "C"**

**MODEL CONSENT FORM**

**CONSENT FORM TO PARAGRAPH 14 OF THE DECLARATION OF MEMBERSHIP AND ADDITIONAL COVENANTS FOR STILLWOOD**

**WHEREAS**, the undersigned owner(s) (hereinafter referred to as "Owner") is the record owner and holder of title in fee simple to a Unit within Stillwood development in DeKalb County, Georgia, located at the address described below, and more particularly shown as Unit \_\_\_\_\_, as located in Land Lot 1, 148h District, of DeKalb County, Georgia as shown on the plat of survey for Stillwood Plat Book 86, Page 90 and Plat Book 87, Pages 33 and 94, DeKalb County, Georgia records (hereinafter "Owner's Property") such plat being incorporated herein by this reference; and

**WHEREAS**, Owner's Property is currently subject to all terms and provisions of the Declaration of Membership and Additional Covenants for Stillwood as recorded at Deed Book \_\_\_\_\_, Page \_\_\_\_\_, et seq. (the "Declaration"), with the exception of Paragraph 14 thereof, and

**WHEREAS**, Owner now desires to submit Owner's Property to Paragraph 14 of the Declaration as a Covenant Member of the Association, as defined in the Declaration;

**NOW, THEREFORE**, Owner does hereby consent, on behalf of Owner, Owner's successors, successors-in-title, heirs, and assigns, that from and after the date of this Consent, Owner's Property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all of the terms, provisions, covenants, and restrictions contained in the Declaration as a Covenant Member of the Association, all of which shall run with the title to Owner's Property and shall be binding upon all persons having any right, title, or interest in Owner's Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. Owner understands and acknowledges that, by submitting Owner's Property to Covenant Membership (as defined in the Declaration) in the Association, Owner is hereby subjecting Owner's Property to all terms and provisions contained within Paragraph 14 thereof.

Signed, sealed and delivered  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Print or Type Full Name of Owner(s)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature of Co-Owner

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Street Address

[NOTARY SEAL]

**THIS PORTION TO BE COMPLETED BY ASSOCIATION UPON RETURN FROM OWNERS:**

*Signed, sealed, and delivered*  
*this \_\_\_\_ day of \_\_\_\_, 20\_\_*

**Approved by:**  
**STILLWOOD**  
**HOMEOWNERS ASSOCIATION, INC.**

\_\_\_\_\_  
Witness

By:

\_\_\_\_\_  
President

\_\_\_\_\_  
Notary Public  
[NOTARY SEAL]

[CORPORATE SEAL]

[For Subsequent Additions]

**EXHIBIT "D"**

**BYLAWS**