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**Linda Carter**  
Clerk of Superior Court  
DeKalb County, Georgia

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Decatur, Georgia 30030

CROSS REFERENCE: Deed Book: 13064  
Page: 28

**FIRST AMENDMENT  
TO THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR BUCKHEAD PLACE TOWNHOMES**

THIS FIRST AMENDMENT (hereinafter referred to as "First Amendment") is made this  
18 day of December, 2007 by **BUCKHEAD PLACE HOMEOWNERS**  
**ASSOCIATION, INC.**, a Georgia nonprofit corporation (hereinafter referred to as "Association").

WITNESSETH

**WHEREAS**, Saxon Place Development, LLC, as "Declarant", executed that certain Amended and Restated Declaration of Covenants, Conditions and Easements for Saxon Place Townhomes (Now Known as "Buckhead Place Townhomes"), which was recorded March 25, 2002 at Deed Book 13064, Page 28, *et seq.*, DeKalb County, Georgia land records (hereinafter as supplemented and/or amended from time to time, the "Declaration"); and

**WHEREAS**, the Association is a nonprofit corporation organized under the Georgia Nonprofit Corporation Code to be the Association named in the Declaration to have the power and authority set forth therein; and

**WHEREAS**, pursuant to Article XVI, Section 1 of the Declaration, the Declaration may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least two-thirds (2/3) of the Total Association Vote; and

**WHEREAS**, further pursuant to Article XVI, Section 1 of the Declaration, as long as Declarant has the right to appoint and remove directors and officers of the Association as provided in Article III, Section 2 of the Association's Bylaws, any amendment to the Declaration shall require the written consent of Declarant; and

**WHEREAS**, Owners holding at least two-thirds (2/3) of the Total Association Vote agreed to amend the Declaration as hereinafter provided; and

**WHEREAS**, attached hereto as Exhibit "A" and incorporated herein by reference is the sworn statement of the Secretary of the Association, which sworn statement certifies that the affirmative vote or written consent, or any combination thereof, of Owners holding at least two-thirds (2/3) of the Total Association Vote was lawfully obtained; and

**WHEREAS**, the Declarant no longer has the right to appoint and remove the directors and officers of the Association; and

**WHEREAS**, the Association and the members thereof desire to amend the Declaration for the purposes as set forth herein;

**NOW THEREFORE**, the Association and members hereby adopt this First Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for Buckhead Place Townhomes and all the property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject of the Declaration amended as follows:

1.

The Declaration is amended by deleting Article XII, Section 1(e) of the Declaration in its entirety and replacing it with a new Section 1(e) to read as follows:

- (e) maintenance and repair of the following portions of the Lots:
  - (i) All roof surfaces, portions of roofs above the uppermost surface of the plywood underdecking, all gutters and all downspouts;
  - (ii) All exterior building surfaces (including all brick, siding and columns, if any, but excluding any and all wrought iron and metal surfaces);
  - (iii) All exterior painting (including painting of all shutters, trim and columns, if any, but excluding painting of any wrought iron and metal surfaces and all decks and lattice attached to such decks); and
  - (iv) All lawn maintenance and landscaping on Lots, including lawns and/or landscaping which have been enclosed by a fence or gate by an Owner. In addition, the Association may maintain, repair and replace any dead trees, shrubs, plants or other landscaping located a Lot, as determined by the Board in its sole discretion, the cost of which may be assessed against the Lot and the Owner as a specific assessment.

2.

The Declaration is further amended by deleting the first paragraph of Article XII, Section 2 in its entirety and replacing it with the following paragraph to read as follows:

Section 2. Owner's Responsibility. Except as provided in Article XII, Section 1 above, all maintenance of the Lot shall be the responsibility of the Owner thereof. In addition, the Lot Owner shall maintain all pipes, lines, ducts, conduits, or other apparatus which serve only the Lot located within the Lot's boundaries or, if located outside the Lot's boundaries, the portion of the pipe from the cutoff valve serving the Lot (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 Lot). The Owner shall also maintain and repair all doors and windows on the Lot, except for the painting of the front door and the garage doors, which shall be the Association's responsibility. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto. Any maintenance which involves an exterior change, including, without limitation, repainting of the exterior of improvements in a different color, shall require prior approval of the Board or its designee pursuant to Article VIII of the Declaration.

3.

The Declaration is hereby amended by deleting Article X of the Declaration, entitled "Leasing", in its entirety and replacing it with a new Article X to read as follows:

Section 1. Leasing. In order to protect the equity of the individual members, to carry out the purpose for which the Association was formed by preserving the character of the Community as a homogenous residential community of predominantly owner-occupied homes and by preventing the Community from assuming the character of a renter-occupied neighborhood, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially owner-occupied, leasing of Lots shall be governed by the restrictions imposed by this Article. Except as provided herein, the leasing of Lots shall be prohibited.

Section 2. Definitions.

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

(b) Applicability - Grandfathered Lot. Those Lots which are being leased as of the date this First Amendment is recorded in the DeKalb County, Georgia

land records (hereinafter the "Effective Date") are for all purposes herein a "Grandfathered Lot" and may continue to be leased, provided the tenant complies with all regulations pertaining to the use of the Lot set forth herein and in the Declaration. All Owners of Grandfathered Lots shall file a copy of the lease agreement in effect as of the Effective Date with the Board. Any Lot that is designated as a "Grandfathered Lot" shall authorize a Lot Owner to lease said Lot at any time until such time as title to said Lot is conveyed to any person or entity other than the person or entity holding record title as of the Effective Date. Upon the transfer of title described herein, the Lot shall automatically be converted to Restricted Leasing Status, regardless of the continued occupancy by the same lessee.

(c) Open Leasing Status. Any Lot that is designated as being in "Open Leasing Status" shall authorize a Lot to be leased in accordance with the provisions set forth herein. A Lot designated as being in Open Leasing Status shall remain in Open Leasing Status until such time as title to the Lot is conveyed or transferred to another person or entity, after which conveyance the Lot shall be converted to Restricted Leasing Status regardless of the continued occupancy by the same lessee unless the new owner requests that the Lot remain in Open Leasing Status within ninety (90) days of said conveyance. Notwithstanding anything to the contrary herein, any Lot in Open Leasing Status shall automatically be converted to Restricted Leasing Status if the Lot is not subject to a lease for ninety (90) or more consecutive days.

(d) Restricted Leasing Status. Any Lot that is designated as being in "Restricted Leasing Status" shall prohibit a Lot Owner from leasing his or her Lot except as may be provided below for cases of undue hardship. All Lots that are not Grandfathered Lots shall be in Restricted Leasing Status until such time as the Lot is converted to Open Leasing Status as provided below.

Section 3. General. No Owner of a Lot in Restricted Leasing Status may lease his or her Lot if ten percent (10%) or more of the Lots in the community are in Open Leasing Status, except as provided below for cases of undue hardship. Any Owner of a Lot in Restricted Leasing Status may apply in writing to the Board of Directors for conversion to Open Leasing Status in accordance with rules and regulations promulgated by the Board of Directors. Upon receipt of such written application, the Lot shall be placed at the end of a waiting list for conversion to Open Leasing Status. At such times as less than ten percent (10%) of the Lots in the Community are in Open Leasing Status, the Board of Directors shall notify the Owner of the Lot at the top of the waiting list of its conversion to Open Leasing Status, and such Owner shall have ninety (90) days within which to lease the Lot or it shall automatically revert to Restricted Leasing Status. In addition, any Lot in Open Leasing Status shall automatically be converted to Restricted Leasing Status if the Lot is not subject to a lease for ninety (90) or more consecutive days.

Section 4. Undue Hardship. Notwithstanding the provisions of Section 3 above, the Board of Directors may allow reasonable leasing of a Lot upon application in accordance with this Article to avoid undue hardship, including, but not limited to the following situations: (1) a Lot Owner must relocate his or her residence outside the Atlanta metropolitan area and cannot, within six (6) months from the date that the Lot was placed on the market, sell the Lot except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) the Owner dies and the Lot is being administered by his or her estate; and (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot, in which case the Lot Owner must reapply every year for renewal of the hardship exception.

Any Owner who believes that he or she must lease his or her Lot to avoid undue hardship shall submit a written application to the Board of Directors setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board of Directors may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board of Director's written approval of the Owner's application.

Those Owners who have complied with this Section, have demonstrated that the inability to lease their Lot would result in undue hardship, and have obtained the requisite written approval of the Board of Directors may lease their Lots for such duration as the Board of Directors reasonably determines is necessary to prevent undue hardship.

Section 5. Leasing Provisions. Leasing permitted by this Article shall be governed by the following provisions:

(a) General. Lots may be leased only in their entirety; no fraction or portion may be leased without the Board of Directors prior written approval. All leases shall be in writing and for an initial term of at least one (1) year, except with written approval by the Board of Directors, which shall not be unreasonably withheld in cases of undue hardship. There shall be no subleasing or assignment of leases unless approved in writing by the Board of Directors. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations and the lease shall provide that the Owner has made available to the lessee copies of the Declaration, Bylaws, and the Association's rules and regulations.

(b) Notice. Within ten (10) days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board of Directors with a copy of the lease and the name of the lessee and all other people occupying the Lot, the phone number of the lessee, the Owner's address other than at the Lot and other such information as the Board of Directors may reasonably require.

(c) Liability for Assessments, Use of Common Property, and Compliance with Declaration, Bylaws, and Rules and Regulations. Each Owner covenants

and agrees that any lease of a Lot 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 Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(i) Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee shall abide by and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure such compliance. Owner agrees to cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto and is responsible for all violations caused by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. In the event that the lessee or a person living with the lessee violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the provisions contained herein. If the fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot.

The Board of Directors shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this subsection. Any transaction which does not comply with this Article shall be voidable at the option of the Board of Directors.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any occupant, or any guest of the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law.

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 violations of the Declaration, Bylaws and rules and regulations of the Association adopted thereunder, including the power and authority to terminate the lease without liability upon such violation(s) and to evict the lessee and/or the Occupant(s) as attorney-in-fact on behalf and for the benefit of the owner, in accordance with the terms hereof, it being hereby agreed that in such instance the Association shall have standing to terminate the lease and initiate dispossessory proceedings against the lessee and/or the Occupant(s). In the event the Association proceeds to evict the lessee and/or the Occupant(s) of

a Lot, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Lot. Notwithstanding any provision in this subsection, in the event the Association evicts a lessee as provided herein, the Lot shall automatically be converted to Restricted Leasing Status even if title to said Lot has not been conveyed to any person or entity.

(ii) 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.

(ii) Liability for Assessments. When a Lot Owner who is leasing his or her Lot 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 of Directors, 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 of Director's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board of Director's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

Section 6. Mortgagee Exemption. This Article shall not apply to any leasing transaction entered into by the Association or an institutional holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such first Mortgage.

4.

Unless otherwise defined herein, the words used in this First Amendment shall have the same meaning as set forth in the Declaration.

5.

This First Amendment shall be effective only upon being recorded in the records of the Clerk of Superior Court of DeKalb County, Georgia and shall be enforceable against current Owners of a Lot subject to the Declaration.

6.

Except as herein modified, the Declaration shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the Association has caused this First Amendment to be executed under seal the day and year first above written.

ASSOCIATION: **BUCKHEAD PLACE HOMEOWNERS ASSOCIATION, INC.**, a Georgia nonprofit corporation

By: Nanette Cantruy  
Name: Nanette Cantruy  
President

Attest: Sandra L. Ward, J.D.  
Name: Sandra L. Ward, J.D.  
Secretary

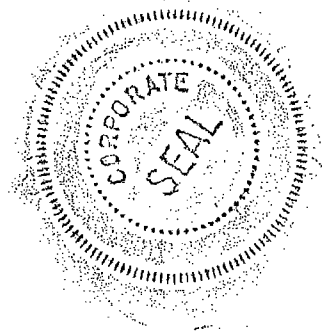
Signed, sealed and delivered  
in the presence of

[AFFIX CORPORATE SEAL]

Witness

Lashonda L. James  
Notary Public

[AFFIX NOTARY SEAL]



P:\clients\2620\Buckhead Place\Amendment\Amendment-Leasing

**Linda Carter**  
Clerk of Superior Court  
DeKalb County, Georgia

EXHIBIT "A"

Sworn Statement of Secretary of  
Buckhead Place Homeowners Association, Inc.

STATE OF GEORGIA

COUNTY OF DEKALB

Re: Buckhead Place Townhomes

Personally appeared before me, the undersigned deponent who, being duly sworn, deposed and said on oath that:

1. Deponent is the Secretary of Buckhead Place Homeowners Association, Inc.
2. Deponent is duly qualified and authorized to make this Affidavit and knows the facts contained herein of are his or her own personal knowledge.
3. The foregoing First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Buckhead Place Townhomes was approved by the affirmative vote or written consent, or any combination thereof, of Owners holding at least two-thirds (2/3) of the Total Association Vote, as provided in the Declaration.
4. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-2-20.

This the 18<sup>th</sup> day of December, 2007.

By:  
Name:

Sandra L. Ward, Jr.  
Sandra L. Ward, Jr.

Sworn to and Subscribed  
before me this 18th day of December 2007.

Lashonda L. James  
Notary Public

[AFFIX NOTARY SEAL]



*Linda Carter*  
Linda Carter

[SPACE ABOVE RESERVED FOR RECORDING DATA]

Reference: Deed Book 12928  
Page 360

WHEREAS, Article VI, Section 8 of the Bylaws of Saxon Place Homeowner's Association, Inc. ("Original By-Laws") provides for unilateral amendment of the Original By-Laws by the Declarant; and

WHEREAS, Saxon Place Development, LLC desires to amend the Original Declaration and Original By-Laws; and

WHEREAS, these Amendments do not alter, modify, change or rescind any right, title, interest, or privilege held by any first Mortgage Holder; provided, however, in the event a court of competent jurisdiction determines that these Amendments do alter, modify, change, or rescind any right, title, interest, or privilege held by any first Mortgage Holder without such first Mortgage Holder's consent in writing to these Amendments, then these Amendments shall not be binding on the first Mortgage Holder so involved, unless such first Mortgage Holder consents to these Amendments; and if such consent is not forthcoming, then the provisions of the Original Declaration and Original By-Laws effective prior to these Amendments shall control with respect to the affected first Mortgage Holder;

WHEREAS, the Saxon Place Townhomes development is now known as "Buckhead Place Townhomes";

NOW, THEREFORE, the Original By-Laws and the Original Declaration and all exhibits thereto are hereby stricken in their entirety and the following is simultaneously substituted therefore:

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR BUCKHEAD PLACE TOWNHOMES

WEISSMAN, NOWACK, CURRY & WILCO, P.C.

Attorneys  
Two Midtown Plaza - 15th Floor  
1349 West Peachtree Street  
Atlanta, Georgia 30309  
(404) 885-9215

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DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

FOR

BUCKHEAD PLACE TOWNHOMES

THIS DECLARATION is made on the date set forth below by Saxon Place Development, LLC, a Georgia limited liability company ("Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article II, Section 1 of this Declaration; and

WHEREAS, Declarant desires to subject the real property described in Article II, Section 1 to the provisions of this Declaration to create a residential community of attached townhomes and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant declares that, subject to the provisions of Article XVII, Section 2 of this Declaration, the real property described in Article II, Section 1 of this Declaration, including the improvements constructed or to be constructed thereon, is subjected to the provisions of this Declaration, and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Declaration, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall be for the benefit of all owners of the property subject to this Declaration.

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THIS DECLARATION DOES NOT AND IS NOT INTENDED TO CREATE A CONDOMINIUM REGIME SUBJECT TO THE GEORGIA CONDOMINIUM ACT, O.C.G.A. § 44-3-70, ET SEQ.

THIS DECLARATION DOES NOT AND IS NOT INTENDED TO SUBMIT THE PROPERTY TO THE TERMS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. § 44-3-220, ET SEQ.

## ARTICLE I

### Definitions

The following words, when used in this Declaration or in any Supplementary Declaration (unless the context shall prohibit), shall have the following meanings:

- (1) "Additional Agreements" shall mean that certain Declaration of Easements and Agreement for Development of Saxon Place as a Planned Development by Atlanta Development, Inc. recorded in Deed Book 11600, Page 509, et seq., DeKalb County, Georgia records, and that certain Agreement and Declaration of Restrictive Covenants recorded in Deed Book 11600, Page 498, et seq., DeKalb County, Georgia records.
- (2) "Architectural Control Committee" or "ACC" shall mean the committee established to exercise the architectural review powers set forth in Article VIII hereof.
- (3) "Area of Common Responsibility" shall mean the Common Property, together with those areas, if any, which by the terms of this Declaration or by agreement with any other Person become the Association's responsibility to maintain.
- (4) "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of Buckhead Place Homeowners Association, Inc., which have been filed with the Secretary of State of the State of Georgia.
- (5) "Association" shall mean Buckhead Place Homeowners Association, Inc., its successors and assigns.
- (6) "Association Instruments" shall mean this Declaration and all exhibits hereto, including the Bylaws, Articles of Incorporation, the plats and plans, and any design standards and rules and regulations of the Association, all as may be supplemented or amended from time to time.
- (7) "Board" or "Board of Directors" shall mean the appointed or elected body of the Association, as applicable, having its normal meaning under Georgia corporate law.
- (8) "Bylaws" shall mean the Bylaws of Buckhead Place Homeowners Association, Inc., attached to this Declaration as Exhibit "B" and made a part of this Declaration.
- (9) "Common Expenses" shall mean the expenses incurred or anticipated to be incurred by the Association for the general benefit of the Community, including, but not limited to, the costs of the common water and sewer bills and those expenses incurred for maintaining, repairing, replacing, and operating the Common Property and Area of Common Responsibility, and as required under any easement agreement recorded in DeKalb County, Georgia records, which burdens or benefits the Community.
- (10) "Common Property" shall mean any and all real and personal property and easements and other interests, together with the facilities and improvements located on the Community, now or in the future owned by the Association, including but not limited to, all landscape and grassy areas not included in a Lot, all roads, sidewalks and other concrete and paved areas not included in a Lot, the brick fence, the entry feature, all retaining walls, and all personal property of the Association in any of these areas.

(11) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "A" attached hereto and incorporated herein by this reference, and such additions hereto as may be made by the Declarant or the Association by Supplementary Declaration of other real property.

(12) "Community Documents" shall mean this Declaration and all exhibits to this Declaration, including the Bylaws of the Association, and the Survey, all as may be supplemented or amended from time to time.

(13) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing on the Community. Such standard may be more specifically determined by the Board and the ACC. This determination however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(14) "Declarant" shall mean and refer to Saxon Place Development, LLC, a Georgia limited liability company, and such of its successors-in-title who shall (i) acquire, from a predecessor "Declarant," for the purpose of development or sale, all or any portion of the real property described in Exhibit "B" hereto, and (ii) be designated as the "Declarant" in the deed of transfer by which such successors-in-title shall so acquire its interest in such real property, or by written assignment of Declarant rights in an instrument recorded in the DeKalb County, Georgia records.

In all events there shall only be one (1) "Declarant" at any one time; in no event shall more than one (1) Person have the right to exercise the power and authority of the "Declarant" at any one time.

(15) "Easement Agreements" shall mean those certain easement agreements benefiting or burdening the Community recorded now or in the future in the DeKalb County, Georgia records, including, but not limited to, the easement agreements set forth in Article XVI, Section 11 hereof.

(16) "Effective Date" shall mean the date that this Declaration is recorded in the DeKalb County, Georgia land records.

(17) "Lot" shall mean any plot of land on the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family residence site as shown on the Survey. Each Lot consists of a Lot and all improvements thereon, including but not limited to, a residence, a garage, a driveway entrance or a portion of a shared driveway entrance, as the case may be, in front of the residence's garage, a backyard area, as the case may be, and a back deck/patio.

(18) "Mortgage" shall mean any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(19) "Mortgagee" or "Mortgage Holder" shall mean the holder of a Mortgage.

(20) "Occupant" shall mean any Person occupying all or any portion of a Lot for more than thirty (30) days, either consecutive or nonconsecutive, in any one (1) year period, regardless of whether such Person is a tenant or the Owner of such property.

(21) “Owner” shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located on the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation. The term “Owner” also shall include Declarant until Declarant’s right to appoint and remove directors and officers expires as set forth in Article III, Section 2 of the Bylaws.

(22) "Person" shall mean any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(23) "Supplementary Declaration" shall mean an amendment or supplement to this Declaration, which subjects additional property to this Declaration or imposes additional restrictions and obligations on the property, or both.

(24) "Survey" shall mean the plat or plats for Buckhead Place Townhomes, as amended, recorded in Dekalb County, Georgia records. The Survey is incorporated herein by reference as fully as if the same were set forth in its entirety herein.

(25) "Total Association Vote" shall mean all of the votes attributable to members of the Association (including votes of Declarant), and the consent of Declarant so long as Declarant owns any property for development and/or sale in the Community.

## ARTICLE II

Property Subject To This Declaration, Conveyance and Partition  
Of Common Property

Section 1. Property Hereby Subjected To This Declaration. The real property described in Exhibit "A" attached hereto and by this reference made a part hereof is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration.

Section 2. Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall be Common Property to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Article II, Section 3.

Section 3. Partition of Common Property. The Common Property shall remain undivided, and no Owner or any other Person, but excluding the Declarant, shall bring any action for partition or division of the whole or any part of the Common Property without the written consent of all Owners and all holders of all Mortgages encumbering any portion of the Community.

### ARTICLE III

#### Association Membership and Voting Rights

Section 1. Membership. Every Person who is the record owner of a fee interest in any Lot that is subject to this Declaration shall automatically be a member in the Association. Membership shall not include Persons who hold a security interest only and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall go along with and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor one (1) office held for each Lot owned.

Section 2. Voting. Members shall be entitled to one (1) equal vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be cast as those Owners decide and instruct the Secretary prior to any meeting. If the Secretary is not instructed, the Lot's vote shall be suspended in the event more than one (1) Owner of a Lot attempts to cast it.

### ARTICLE IV

#### Association Rights and Restrictions: Variances

Section 1. 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:

- (a) make and to enforce reasonable rules and regulations governing the use of the Community, including the Lots and the Common Property;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) 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;



principal amount due, and costs, including, without limitation, reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

The Association shall, within five (5) business days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Annual assessments shall be levied at a uniform rate per Lot and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days written notice, of the annual assessment for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

Section 3. Computation of Annual Assessment. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include, if necessary, a capital contribution or reserve in accordance with a capital budget separately prepared.

The common assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total budgeted operating costs of the Association. The Board shall cause the proposed budget and assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year (or at least thirty (30) days prior to the due date of the first installment in the case of the initial budget). The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments to cover unbudgeted expenses or expenses in excess of those budgeted if approved by a majority of the Total Association Vote. 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 imposed.

Section 5. Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association and the Association shall be entitled to file such a lien in the land records of Dekalb County, Georgia. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes and (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Dekalb County, Georgia and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.



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

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine which shall not exceed fifteen percent (15%) of the assessment payment. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include interest not to exceed the maximum rate permitted by law per annum on the principal amount due from the date first due and payable, all late charges, all costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same. In addition to the other remedies provided herein, the Association shall have the right to suspend the voting rights of a Lot Owner for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid.

In the event that any assessment or other charge is delinquent for sixty (60) days and the amount owed is in excess of the dollar amount equal to three (3) times the monthly assessment owed by a Lot Owner, then, in addition to all other rights provided herein, upon no less than ten (10) days written notice, the Association shall have the right to suspend any utility or services to the Lot paid for as a Common Expense by the Association. Any costs incurred by the Association in discontinuing and/or reconnecting any utility or service, including reasonable attorney's fees, shall be an assessment against the Lot. The utility or service shall not be required to be restored until all sums owed the Association are paid in full, at which time the Association shall make arrangements for restoration of the utility or service. A Lot Owner whose utility or service has been suspended hereunder shall not be entitled to use any such utility or service from any source, and any such unauthorized use shall be considered a theft of services under O.C.G.A. Section 16-8-5.

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



## ARTICLE VI

### Insurance and Casualty Losses

Section 1. Insurance. 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 against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief, in an amount sufficient to cover the full replacement cost, less ordinary deductibles, or any repair or reconstruction in the event of damage or destruction from any such hazard, and shall also obtain a public liability policy covering all the Common Property and all damage or injury caused by the negligence of the Association or any of its agents, which public liability policy shall have at least a Five Hundred Thousand Dollar (\$500,000) any one person/One Million Dollar (\$1,000,000) Dollar limit (per occurrence), as respects bodily injury, and a Fifty Thousand Dollar (\$50,000) Dollar minimum property damage limit. Premiums for all such insurance shall be Common Expenses of the Association. The policy may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining whether the insurance equals at least the full replacement cost.

In addition to casualty insurance on the Common Property, the Association shall obtain and continue in effect adequate blanket all-risk casualty insurance in such form as the Board of Directors deems appropriate for the full replacement cost, less ordinary deductibles, on Lots. All such insurance shall be for the full replacement cost, less ordinary deductibles. All such policies shall provide for a certificate of insurance for each Lot to be furnished to the Association and shall further provide that the policy may not be cancelled or terminated except upon thirty (30) days' written notice to the Association, except ten (10) days' written notice for nonpayment of policy premiums.

By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that in the event any improvement is not insured by a blanket all-risk casualty insurance policy obtained by the Association, as provided for in Section 1 of this Article, each individual Owner shall carry insurance in an amount equal to the full replacement value of all the improvements located thereon and shall deliver to the Association such certificate of insurance, as needed, to evidence that such coverage is currently in effect. Each individual Owner further covenants and agrees that in the event of loss to or damage and destruction of the improvements located on a Lot, the individual Owner shall proceed promptly to repair or reconstruct the damaged structure in a manner consistent with the original construction.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as Trustee for each of the Owners. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in the State of Georgia and holding a rating of XI or better in the financial category, as established by Best's Insurance Report, if such company is available, or, if not available, the best rating possible or its equivalent rating.

(b) All policies shall be for the benefit of the Owners of Lots and their mortgagees as their interests may appear.

(c) Provision shall be made for the issuance of a certificate of insurance to each Owner and his or her mortgagee, if any, which shall specify the amount of such insurance attributable to the particular Owner's Lot.



Section 3. Dishurment of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction to the Common Property for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction, as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction shall be retained by and for the benefit of the Association and placed in a capital improvements account.

(b) If it is determined, as provided for in this Article, that the damage or destruction to the Common Property for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 8.3(a) hereof.

(c) In the event the Association obtains casualty insurance covering any Lots, then the damage or destruction to such Lots for which proceeds are paid shall be repaired. Any proceeds remaining after defraying such costs of repairs or reconstruction shall be retained by and for the benefit of the Association and placed in a capital improvements account.

Section 4. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Community covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty with each Lot and the Common Property having the same location as before; construction or reconstruction shall be in substantial conformity with that which existed prior to the damage or destruction.

(b) Any such damage or destruction to the Common Property shall be repaired or reconstructed unless at least seventy-five (75%) percent of the Total Association Vote shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have any right to participate in the determination of whether the damage or destruction shall be repaired or reconstructed.

Section 5. Repair and Reconstruction. If the damage or destruction for which Association insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members, levy a special assessment against all Owners in sufficient amounts to provide funds to pay such excess cost of repair or reconstruction. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.













have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Community for fourteen (14) consecutive days or longer without prior written Board permission.

Boats, trailers, buses, panel trucks, trucks with a load capacity of one (1) ton or more, vans (excluding vans used by handicapped persons, mini-vans or utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), recreational vehicles (RV's and motor homes), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors other than Sheriff's, Marshall's or police officer's vehicles marked as such, are also prohibited from being parked on a Lot or on the Community, except in garages or other areas approved by the Board as parking areas for particular types of vehicles. Notwithstanding the foregoing, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the Community during normal business hours for the purpose of serving any Lot or the Common Property; provided, however, no such vehicle shall remain on the Lot or the Common Property overnight for any purpose unless prior written consent of the Board is first obtained.

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

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Lot or residence, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately. If a vehicle is towed or booted in accordance with this Article IX, Section 6, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing or booting activity. 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. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

**Section 7. Garages.** It is prohibited for an Owner or Occupant of a Unit that includes a garage to convert such garage to any other use. No Owner or Occupant of a Unit that includes a garage shall park his or her car or other motor vehicle on any portion of the Community, other than in the garage, unless the maximum number of cars or similarly sized motor vehicles which can be parked in the garage according to its design capacity are already parked in said garage. Garage doors shall remain closed at all times, except for necessary use, ingress, and egress. All garages shall be maintained in such a manner that parking for the maximum number of motor vehicles for which it was originally designed to hold is allowed and possible.

**Section 8. Garage Sales.** No garage sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Community without prior written Board consent. If so permitted, any such activities shall be subject to all reasonable conditions that the Board may impose.

**Section 9. Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot or the Common Property, with the exception of a reasonable number of generally recognized household pets including dogs, cats, birds or other usual and common household pets.

No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose, and no structure for the care, housing, or confinement of any pet, such as dog houses and dog runs, shall be constructed or maintained on any part of the Community without prior written ACC approval. Notwithstanding the foregoing, pets may be kept in fenced areas approved under Article VIII or in areas where the pet is restricted by an electronic fence. Pets must be kept on a leash at all times when on the Common Property and on the Lot of another Owner. Feces left by pets upon the Common Property or in any area subject to an Easement Agreement must be removed by the owner of the pet or the person responsible for the pet.

No potbellied pigs, snakes, or other animals determined in the Board's sole discretion to be dangerous may be brought onto or kept on the Community at any time. Furthermore, any pet that is permitted to roam free, or in the Board's sole discretion, endangers the health of any Owner or Occupant, makes objectionable noise, or constitutes a nuisance or inconvenience to the Owners or Occupants or to the owner of any property located adjacent to the Community, may be permanently removed by the Board from the Community upon seven (7) days written notice to the owner of such pet. If the Owner or Occupant fails to remove the pet from the Community, the Board may remove the pet. Notwithstanding the foregoing, any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any Community member may be removed by the Board without prior written notice to the pet's owner.

All Owners and Occupants keeping pets within the Community shall comply with all applicable governmental ordinances and regulations. Without prejudice to the Board's right to remove any such household pets, the Board may prohibit a household pet that has caused damage or injury from being walked in the Community'. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall also be registered, licensed and inoculated as required by law. Furthermore, any Owner or Occupant who keeps or maintains any pet upon the Community shall be deemed to have agreed to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Community.

Section 10. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. No Lot on the Community shall be used, in whole or in part, for the storage of any property or thing that will cause a Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will discharge foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the surrounding property. No noxious or offensive activity shall be carried on, on the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property on the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier or other sound device, except for devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law. However, any siren or device for security purposes shall contain a device which causes it to automatically shut off within fifteen (15) minutes.

Section 11. Unightly or Unkempt Conditions. The pursuit of hobbies or other activities which might tend to cause disorderly, unsightly, or unkempt conditions, including without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, shall not be pursued or undertaken on any part of the Community. Clothing, clotheslines, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the residence. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture and grills may be kept on the patio or deck serving the Lot.

Section 12. Window Treatments. Unless otherwise approved in writing by the Board, all windows which are part of a Lot shall have window treatments and any portion thereof visible from outside the residence shall be white or off-white in color. Bed sheets shall not be used as window treatments.

Section 13. Air Conditioning Units. Except as may be permitted by written consent of the ACC, no window air conditioning units may be installed. Unless otherwise placed on a Lot by the Declarant, condensing units for air conditioners shall only be located in the rear or along the side of a residence constructed upon a Lot and shall be screened so as to be concealed from view of neighboring Lots, Common Property and all streets which border the Lot.

Section 14. Antennas and Satellite Dishes. Except as provided below, no satellite dish, 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 on any portion of the Community; provided, however, that the Association shall have the right to erect, construct and maintain such devices. The following shall apply to all Owners:

(a) No transmission antenna, of any kind, may be erected anywhere on the Community without written approval of the Board of Directors or the ACC.

(b) No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one (1) meter in diameter shall be placed, allowed or maintained upon the Community.

(c) DBS and MMDS satellite dishes or antennas one (1) meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, both as may be amended from time to time.

In the event of a transfer of a Lot which includes the satellite dish or antenna, the Grantee shall assume all responsibility for the satellite dish or antenna and shall comply with this Declaration, the Bylaws and the rules and regulations regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dish or antenna.

Section 15. Fences. No fence or fencing-type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the ACC. The ACC may issue guidelines detailing acceptable fence styles or specifications and locations.

Section 16. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles and other similar items shall be located in an area or screened in a manner as provided in the rules and regulations promulgated by the ACC from time to time. All construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. No garbage or trash shall be placed on the Common Property temporarily or otherwise, except as provided herein. Rubbish, trash and garbage 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, garbage or trash at the street curb for pickup except within the twelve (12) hours preceding such Owner or Occupant's scheduled garbage or recycling pickup. All such garbage, trash and rubbish receptacles shall be removed from the street curb and screened or concealed from view within twelve (12) hours after such scheduled garbage or recycling pickup.

Section 17. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replating shall not be in violation of the applicable subdivision and zoning regulations.

Section 18. Outbuildings. No structures of a temporary character such as tents, shacks, carports, barns, tool sheds, dog houses, cages or coops or other outbuilding shall be erected by any Owner or Occupant on any portion of the Community, at any time, other than by Declarant.

Section 19. Tree Removal. No trees or shrubs on any portion of the Community shall be removed without the express written consent of the ACC.

Section 20. Firearms and Fireworks. The display or discharge of firearms or fireworks on the Common Property is prohibited; provided, however, that the display of lawful firearms on the Common Property is permitted for the limited purpose of transporting the firearms across the Common Property to or from the Owner's Lot. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A. Section 25-10-1.

Section 21. Heating of Residences in Colder 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 residence on Lots shall be maintained with the heat in an "on" position and at a minimum temperature setting of sixty (60) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two (32) degrees Fahrenheit or below. Owners and Occupants of Lots shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Owner or Occupant shall immediately inform the Association of this failure of the equipment and of the time needed to repair the equipment. All Owners and Occupants of Lots 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 up to Five Hundred and No/100 Dollars (\$500.00) or may cause the water service to the violator's Lot to be discontinued for violation of this Section 21, in addition to any other remedies of the Association. Any fine imposed pursuant to this Section 21 shall be deemed an assessment against the Lot and may be collected in the same manner as provided herein for collection of assessments.

Section 22. 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 Article IX, Section 23, 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 IX, Section 23, 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.







(i) Compliance With Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure such compliance. The Owner shall cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any such violation. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. 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. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Lot.

(ii) 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.

(iii) Liability for Assessments. When an Owner who is leasing his or her Lot 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, special and specific 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 herewith, 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.

Section 3. Applicability of this Article X. This Article X, shall not apply to any leasing transaction entered into by the Declarant or the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

## ARTICLE XI

### Sale of Lots

An Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give the Board written notice of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish the Board, as part of the notice, the name and address of the intended grantee and such other information as the Board may reasonably require. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give the Board written notice of his or her ownership of the Lot. Upon failure of an Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Lot and Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

## ARTICLE XII

### Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall be deemed to include the following:

(a) maintenance, repair, and replacement subject to any insurance then in effect, of the Common Property, including, but not limited to all Common Property landscaping and grassy areas not included in a Lot, all roads, sidewalks and other concrete and paved areas not included in a Lot, the limited access entry system, the entry feature, and all retaining walls (which shall not include any portion of a retaining wall that is also part of a foundation wall of a residence on a Lot);

(b) maintenance and repair of all water and sewer pipes or facilities which serve more than one (1) Lot to the extent that such pipes and facilities are not maintained by the Owner as set forth below or by public, private, or municipal utility companies;

(c) maintenance and repair of all street lights;

(d) maintenance and repair of all storm water detention or retention ponds and storm water drainage system, if and to the extent such ponds and storm water drainage systems are not maintained by a public entity or owner of neighboring property; and

(e) maintenance and repair of the following portions of the Lots:

(i) all roof surfaces, portions of roofs above the uppermost surface of the plywood underdecking, all gutters and all downspouts;

(ii) all exterior building surfaces (including all brick, siding and columns, if any, but excluding any and all wrought iron and metal surfaces);

(iii) all exterior painting (including painting of all shutters, trim and columns, if any, but excluding painting of any wrought iron and metal surfaces and all decks and lattice attached to such decks); and

(iv) all lawn maintenance on Lots (excluding lawns and landscaping within fenced or gated areas on the Lot and within patios or decks, if any, and excluding the replacement of any dead trees, shrubs or other landscaping anywhere on the Lot).

Specifically excluded from such Area of Common Responsibility shall be the following: (1) HVAC or similar equipment located outside the residence; (2) all doors (including screen, storm and garage doors), hinges, frames, locks, and hardware which are part of the entry system, except the Association shall paint the exterior portion of the front door and the garage doors; (3) hoses, vents or water spigots contained in exterior walls of the residence; (4) lighting fixtures pertaining to a particular residence and being located outside an entryway or in a garage; (5) window screens, frames, hardware and glass; (6) foundations and footings including waterproofing above and below grade; (7) pipes which serve only one Lot located within the Lot's boundaries or, if located in the front yard on the Lot, outside the Lot's boundaries, the portion of the pipe from the cutoff valve serving the Lot to the Lot itself, including the cutoff valve serving the Lot; (8) gas lanterns; (9) the replacement of any dead trees, shrubs or other landscaping anywhere on the Lot; (10) any and all wrought iron and metal surfaces; and (11) all improvements made by any Owner or Occupant.

Upon resolution of the Board of Directors and approval of a majority of the members present or represented by proxy at a duly constituted meeting of the members, the Association may assume responsibility for providing additional exterior maintenance upon Lot improvements. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association where the Board has determined that such maintenance would benefit all Owners.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Area of Common Responsibility or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. 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 Article XII, Section 1 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 to directive of any municipal or other governmental authority.

The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. Repairs to improvements on a Lot shall be completed only to the extent of being "paint-ready." Such repair and subsequent cleaning shall be performed based on a reasonableness standard and at the sole discretion of the Board of Directors. In performing its responsibilities hereunder, the Association shall have the authority to delegate such Persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association, is caused through the willful or negligent act of an Owner, his

or her family, guests, lessees, or invitees, and is not completely covered or paid for by insurance, then the Association may perform the maintenance, repair or replacement at the expense of the Owner, and all costs shall be specifically assessed against the Owner and shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

In performing its responsibility hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

Section 2. Owner's Responsibility. Except as provided in Article XII, Section 1 above, all maintenance of the Lot shall be the responsibility of the Owner thereof. In addition, the Owner shall maintain all pipes, lines, ducts, conduits, or other apparatus which serve only the Lot located within the Lot's boundaries or, if located outside the Lot's boundaries, the portion of the pipe from the cutoff valve serving the Lot (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 Lot). The Owner shall provide all landscaping maintenance to his/her Lot and maintain all lawns on such Lot to the extent such areas are fenced or gated. The Owner shall also maintain and repair all doors and windows on the Lot, except for the painting of the front door and the garage doors, which shall be the Association's responsibility. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto. Any maintenance which involves an exterior change, including, without limitation, landscaping and planting or repainting of the exterior of improvements in a different color, shall require prior approval of the Board or its designee pursuant to Article VIII of this Declaration.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Property by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Property) shall be performed at the sole expense and risk of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

Each Owner also shall be obligated:

- (a) To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Lots.
- (b) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.
- (c) Not to make any alterations in the portions of the Lot which are to be maintained by the Association or to remove any portion thereof or to make any additions thereto or do anything with respect to the exterior or interior of the Lot which would or might jeopardize or impair the safety or soundness of any Lot without first obtaining the written consent of the Board of Directors of the Association and all Owners and Mortgagees or the Lots affected, nor shall any Owner impair any easement without first obtaining written consent of the Association and of the Owner or Owners and their Mortgagees for whose benefit such easement exists.
- (d) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, tenants or guests, with the cost thereof to be added to and become part of the Owner's next chargeable assessment.

(e) To aid and assist the Association and its agents and employees as requested by the Association or its agents and employees, including, without limitation, removing, covering, shielding, or otherwise protecting any and all personal property in the areas to be maintained or repaired by the Association and its agents and employees in order for the Association and its agents and employees to conduct its maintenance and repair obligations on the Lots. The Association and its agents and employees shall not be liable for any injury, damage or loss to such personal property that is not removed, covered, shielded or otherwise protected by the Owner or Occupant of the Lot on which such personal property is located as requested by the Association or its agents and employees.

Section 3. Failure to Maintain. If the Board of Directors determines that: (a) any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair or replacement of items of which he or she is responsible hereunder; or (b) that the need for maintenance, repair, or replacement which is in the Area of Common Responsibility is caused through the willful or negligent act of any Owner, his or her family, guests, lessees, or invitees, and is not covered or paid by insurance, in whole or in part, then, except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. In the case of (a) above where the Owner has not discharged his or her responsibility, unless the Board of Directors determines that an emergency exists, the Owner shall have ten (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 and diligently pursue completion thereof within ten (10) days. If the Board determines that an emergency exists or that an Owner has not complied with the demand given by the Association as herein provided, or that the need for maintenance or repair is in the Area of Common Responsibility as in the case of (b) above, then the Association may provide any such maintenance, repair or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be a lien against the Lot, and shall be collected as provided herein for the collection of assessments.

Section 4. Measures Related to Insurance Coverage.

(a) The Board of Directors, upon resolution, shall have the authority to require all or any Owner(s) to do any act or perform any work involving portions of the Community which are the maintenance responsibility of the Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage to the Community, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all Owners to turn off cutoff valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes; requiring Owners to install smoke detectors; requiring Owners to make improvements to the Owner's Lot; and such other measures as the Board may reasonably require so long as the cost of such work does not exceed Five Hundred and No/100 Dollars (\$500.00) per lot in any twelve (12) month period.

(b) In addition to, and not in limitation of, any other rights the Association may have, if any Owner does not comply with any reasonable requirement made by the Board of Directors pursuant to Article XII, Section 4(a) above, the Association, upon fifteen (15) days written notice (during which period the Owner may perform the required act or work without further liability), may perform such required act or work at the Owner's sole cost and expense. Such cost shall be specifically assessed against the Owner and shall be added to and become a part of the assessment obligation of such Owner and shall become a lien

against the Lot and shall be collected in the manner provided for collection of assessments. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to this Article XII, Section 4(b), including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot, except that access may be had at any time without notice in an emergency situation.

Section 5. Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary as the composition of the Board of Directors changes. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Article XII. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

### ARTICLE XIII

#### Party Walls, Fences and Driveways

Section 1. General Rules of Law to Apply. Each wall, fence or driveway built as a part of the original construction on the Lots which shall serve and or separate any two (2) adjoining Lots shall constitute a party wall, party fence or party driveway, as applicable. To the extent not inconsistent with the provisions of this Article XIII, Section 1, the general rules of law regarding the party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Owner shall make no modification to party wall construction that may compromise acoustic privacy and fire rating.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall, fence or driveway shall be shared equally by the Owners who make use of the wall, fence or driveway.

Section 3. Damage and Destruction. If a party wall, fence or driveway is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall, fence or driveway may restore it. If other Owners thereafter use the wall, fence or driveway, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article XIII, shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

Section 5. Arbitration. Any dispute arising concerning a party wall, fence, or driveway shall be resolved by binding arbitration in accordance with O.C.G.A. § 9-9-1, et seq., and the Commercial Rules and Procedures of the American Arbitration Association, as in effect on the date of the recordation of the Declaration. The decision of the Arbitrator shall be final. The Arbitrator shall have authority to award attorney fees and allocate the costs of arbitration as part of any final award. If the parties cannot agree on the selection of the Arbitrator, then the claim or dispute shall be submitted to the American Arbitration Association who shall appoint the Arbitrator.

## ARTICLE XIV

### Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number) (therefore becoming an "eligible holder") will be entitled to timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;
- (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;
- (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) any proposed action that would require the consent of a specified percentage of Mortgage holders.

Section 2. Approval of Action. Unless two-thirds (2/3) of the first Mortgagees or Owners other than the Declarant give their consent, the Association shall not:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this Article XIV, Section 2(a)) other than personal property of the Association;
- (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;
- (c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Property (The issuance and amendment of architectural standards, procedures, rules, and regulations or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this Article XIV, Section 2(c));
- (d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

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

Section 3. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 5. Amendments by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 6. Applicability of this Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Georgia law for any of the acts set out in this Article.

Section 7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## ARTICLE XV

### Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and adjacent portion of the Common Property or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered (in accordance with the terms of this Declaration). The easement shall be five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point. However, an easement for encroachment shall not exist if the willful conduct by an Owner, Occupant, or the Association caused the encroachment.

Section 2. Easements for Use and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of entry and exit, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:



(i) the right, but not the obligation, of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his or her family, tenants, guests, and invitees;

(ii) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the recreational facilities in the Community for any period during which any assessment against his or her Lot which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;

(iii) the right of the Association to borrow money as may be set forth in the Bylaws; 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 any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Community (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof 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 any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Community.);

(iv) the right of the Association to dedicate or grant permits, licenses or easements over, under, through and across the Common Property to governmental entities for public purposes; and

(v) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the affirmative vote of the Owners of at least two-thirds (2/3) of the Lots (other than Lots of Declarant so long as the consent of Declarant is required) and the consent of Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community).

(b) Any Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his or her family, his or her tenants and guests. An Owner shall be deemed to have made a delegation of all these rights to the Occupants of the Owner's Lot, if leased.

Section 3. Easements for Street Lights and Utilities. There is reserved to the Declarant, and the Association, blanket easements upon, across, above and under all Lots on the Community for access, ingress, egress, installation, repairing, replacing and maintaining all utilities and services, including but not limited to any irrigation system and all street lights serving the Common Property, and reading meters for: (a) all utilities serving the Community or any portion of the Common Property, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, (b) water runoff and storm drainage systems, (c) street lights, and (d) any other services such as, but not limited to, a master television antenna system, cable television system, master satellite system or security system which may be installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, to do or to authorize the installation, repairing, replacing, and maintaining of the wires, conduits, cables, bulbs and other equipment related to providing any such utility or service. Should a party furnishing any such

utility or service request a specific license or easement by separate recordable document, the Declarant or Board, as applicable, shall have the right to grant such easement.

It shall also be expressly permissible for any agent or employee of any utility company to enter onto a Lot to read any utility meter. In the event a meter on a Lot is in a gated or fenced in area, such area shall be universally keyed for the utility company(ies) or at the request of the Association, such Owner shall provide the Association with a key to such area, to be used by the utility company. Neither the Declarant nor the Association shall be liable for any loss or damage due to its holding such key or use of such key for the purposes described above and each Owner shall indemnify and hold harmless the Declarant, the Association and its officers and directors against any and all expenses, including attorneys fees reasonably incurred by or imposed upon the Declarant, the Association or its officers or directors in connection with any action, suit or other proceeding (including settlement of such action, suit or proceeding) brought by the Owner or the Owner's family, tenants, guests, employees, invitees or licensees against the Declarant, the Association, its officers or directors, arising out of or relating to its holdings or use of such key for the purposes described above.

Section 4. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in the Association's legal instruments, the Board shall have the right, but not the obligation, to enter upon any property on the Community for emergency, security, and safety reasons. This right may also be exercised by the agents of the Association, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition that may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition after request by the Board.

Section 5. Easement for Association Maintenance. Declarant expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required pursuant to this Declaration. This maintenance shall be performed with a minimum of interference to the quiet enjoyment to a Lot.

Section 6. Easement for Entry Features and Street Signs. There is hereby reserved to the Declarant, the Association, and the designee of either, an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of entry features and street signs for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and the right to grade the land under and around the entry features.

Section 7. Easements for Rear-Loading Garages. There is hereby reserved to the Lot Owners an easement for pedestrian and vehicular access, ingress and egress over and across the driveway of a neighboring Lot as is necessary to allow an Owner to exit and enter a garage located in the rear of said Owner's Lot. This easement right shall be exercised with a minimum of interference to the quiet enjoyment of the neighboring Lot.

Section 8. Public in General. The easements and rights created in this Article XV do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, that nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the Dekalb County, Georgia records. The Board of Directors hereby reserves the right to close temporarily, to



Section 2. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the Community pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Community then owned by the Declarant or its affiliates from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community desired to be effected by the Declarant.

Section 3. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Community submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant.

Section 4. Acquisition of Additional Common Property. Declarant may convey to the Association additional real estate, improved or unimproved, which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 5. Additional Agreements. Every Owner, by acceptance of a deed to a Lot, acknowledges that, in addition to being subject to and bound by the Declaration, he or she is subject to the Additional Agreements and grants the Association the right to act as attorney-in-fact on behalf of all Owners with respect to the Agreement. In addition to all of the rights and obligations which have been conferred or imposed upon the Association pursuant to this Declaration or the Bylaws, the Association shall be entitled to exercise any of the rights conferred upon it and shall be subject to all of the obligations imposed upon it pursuant to the Additional Agreements. The Association and all committees of the Association shall also be subject to all superior rights and powers which have been conferred pursuant to the Additional Agreements. The Association shall take no action in derogation of the rights of or contrary to the interest of the Additional Agreements.

Section 6. Duration. The covenants, restrictions and easements of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless fifty-one percent (51%) of the persons owning plots execute a document to terminate the covenants containing a legal description of the entire area affected by the covenant, a list of all owners affected by the covenant and a description of the covenant to be terminated or such other requirement as provided in O.C.G.A. § 44-5-60. A written instrument reflecting any termination must be recorded no sooner than, but within two years immediately preceding the beginning of a twenty (20) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Article XVI, Section 2.

Section 7. 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. NEITHER THE...

ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL 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 LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD OF DIRECTORS, DECLARANT, ANY SUCCESSOR DECLARANT, AND ACC 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 LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF ANY LOT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS 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.

Section 8. Dispute Resolution. Any Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any director, or any agent of the Association. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing.

Section 9. Indemnification. In accordance with the Georgia Nonprofit Corporation Code, and to the full extent allowed by Georgia law, the Association shall indemnify every person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such person is or was serving as a director or officer of the Association, against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or





(b) the right to tie into any portion of the Community with driveways, parking areas and walkways;

(c) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community;

(d) the right to grant easements over, under, in or on the Community, including, without limitation, the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community;

(e) the right to carry on sales and promotional activities in the Community;

(f) the right to erect and maintain signs, and

(g) the right to construct and operate business offices, construction trailers, model residences, and sales offices. Declarant may use residences, offices, or other buildings owned or leased by Declarant as model residences and sales offices.

Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as hereinabove provided.



IN WITNESS WHEREOF, the undersigned, being the duly appointed officers of Declarant herein, have executed this instrument and affixed the corporate seal this 8th day of March, 2002.

a Georgia limited liability company

By: [Signature] (SEAL)

Name: Dan Woodley

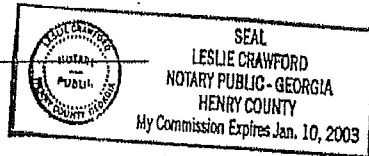
Title: manuscript

Signed, sealed, and delivered  
this 8th day of March, 2002  
in the presence of:

WITNESS

**NOTARY PUBLIC**

My Commission Expires:



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EXHIBIT "A"

Description of Property Submitted

ALL THAT tract or parcel of land lying and being in Land Lot 155 of the 18<sup>th</sup> District of Dekalb County, Georgia, and being more particularly described as follows:

Beginning at an iron pin set on the south right of way of Saxon Place (40 foot right of way) a distance of 297.2 feet southwesterly from its intersection with the westerly right of way of North Druid Hills Road; running thence south 25 degrees 20 minutes 00 seconds east a distance of 170.98 feet to a 1/2" crimp top pipe found; running thence south 39 degrees 44 minutes 06 seconds west a distance of 76.27 feet to a 1/2" crimp top found; running thence south 63 degrees 32 minutes 12 seconds west a distance of 85.11 feet to a 1/2" crimp top pipe found; running thence south 38 degrees 37 minutes 56 seconds west a distance of 295.10 feet to a 1/2" open top pipe found; running thence north 62 degrees 13 minutes 02 seconds west a distance of 102.78 feet to a 1/2" open top pipe found; running thence south 51 degrees 50 minutes 11 seconds west a distance of 47.04 feet to a point; running thence north 07 degrees 29 minutes 31 seconds west a distance of 212.14 feet to a point; running thence north 11 degrees 14 minutes 47 seconds west a distance of 357.89 feet to a point; running thence north 00 degrees 42 minutes 52 seconds west a distance of 31.41 feet to a point; running thence north 28 degrees 55 minutes 52 seconds east a distance of 187.80 feet to a point; running thence easterly 124.38 feet along an arc of a curve to the left, the arc having a radius of 50.0 feet, a chord bearing of north 65 degrees 38 minutes 22 seconds east and a chord length of 94.7 feet to a point; running thence north 84 degrees 23 minutes 01 seconds east a distance of 119.91 feet to a point; running thence south 24 degrees 31 minutes 27 seconds east a distance of 72.01 feet to an angle iron found; running thence south 15 degrees 00 minutes 05 seconds west a distance of 194.57 feet to a 1/2" crimp top pipe found; running thence south 53 degrees 52 minutes 36 seconds east a distance of 138.17 feet to an iron pin found; running thence north 54 degrees 30 minutes 49 seconds east a distance of 59.86 feet to a 1/2" open top pipe found; running thence south 29 degrees 32 minutes 01 seconds east a distance of 51.66 feet to an iron pin set and the point of beginning, being depicted as 5.831 acres on Plat of Survey for Saxon Place Development, LLC, Nexity Bank, and First American Title Insurance Company by Barton Surveying, Inc. dated August 24, 2000, last revised September 13, 2000.