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DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
HEATHERBROOKE

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR HEATHERBROOKE

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<u>Exhibit</u>	<u>Subject Matter</u>
"A"	Land Initially Submitted
"B"	Land Subject to Annexation
"C"	Initial Use Restrictions and Rules
"D"	By-Laws of Heatherbrooke Property Owners Association, Inc.

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR HEATHERBROOKE

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HEATHERBROOKE ("Declaration") is made as of the date set forth on the signature page hereof by D. R. Horton, Inc., a Delaware corporation ("Declarant") and Heatherbrooke Property Owners Association, Inc., a Georgia non-profit corporation ("Association").

Declarant and the Association are the owners of the real property described in Exhibit "A," which is attached and incorporated by reference. By this Declaration, Declarant and the Association impose upon the Community mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Community, and establish a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Community. In furtherance of such plan, Declarant has caused the Association to be formed as a Georgia non-profit corporation to own, operate, and maintain Common Area and to administer and enforce the provisions of the Governing Documents, as such terms are defined below.

Declarant and the Association hereby declare that all of the property described in Exhibit "A" and any additional property described on Exhibit "B" hereto that may be subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Community, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Community.

This document does not and is not intended to create a condominium within the meaning of the Georgia Condominium Act, O.C.G.A. Section 44-3-70, *et seq.*, and does not submit the property described herein to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.*

THIS DECLARATION DISCLOSES SOME IMPORTANT INFORMATION ABOUT THE COMMUNITY FOR THE BENEFIT OF PROSPECTIVE PURCHASERS OF REAL PROPERTY IN THE COMMUNITY. EACH OWNER, BY ACCEPTING A DEED TO PROPERTY IN THE COMMUNITY, ALSO ACCEPTS AND AGREES TO THE COVENANTS AND RESTRICTIONS SET FORTH IN THIS DECLARATION.

ARTICLE I
DEFINITIONS

The terms in this Declaration and the attached exhibits and other Governing Documents shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. **"Area of Common Responsibility"**: The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contract, or agreement.

1.2. **"Articles of Incorporation"** or **"Articles"**: The Articles of Incorporation of Heatherbrooke Property Owners Association, Inc., as filed with the Secretary of State of the State of Georgia, as the same may be amended from time to time.

1.3. **"Association"**: Heatherbrooke Property Owners Association, Inc., a Georgia non-profit corporation, its successors or assigns.

1.4. **"Board of Directors"** or **"Board"**: The body responsible for the administration and operation of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Georgia corporate law.

1.5. **"By-Laws"**: The By-Laws of Heatherbrooke Property Owners Association, Inc., attached as **Exhibit "D"** hereto, as they may be amended.

1.6. **"Common Area"**: All real and personal property, including, without limitation, easements and other interests therein and the facilities and improvements located thereon, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.7. **"Common Expenses"**: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association in a given year, including any reasonable reserve, as the Board may find necessary and appropriate. Common Expenses shall be shared by all Unit Owners equally as provided in Article VIII hereof. Common Expenses include, but are not limited to, the following: (a) costs incurred to maintain the Community entry features, including any expenses for electricity and irrigation associated therewith; (b) costs incurred to maintain the storm water drainage facilities and storm water detention/retention ponds serving the Community; (c) contributions to the reserve fund; (d) property taxes for the Common Area; (e)

insurance premiums; (f) landscape maintenance; and (g) expenses and liabilities incurred as provided herein, the Articles of Incorporation and the By-Laws for indemnification of officers and directors and in connection with the enforcement rights and duties of the Association against Owners and others.

1.8. "Community": The real property described on Exhibit "A," together with such additional property as may be subjected to this Declaration in accordance with Article VII.

1.9. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Community as initially established by Declarant or as may be set forth in the Design Guidelines in Article IX hereof. Upon the termination of the rights of Declarant to act as the Reviewer as provided in Section 9.2 hereof, such standard may be more specifically determined by the Board of Directors or the Architectural Review Committee, as the case may be, but shall be consistent with the Community-Wide Standard established by the Declarant.

1.10. "Declarant": D.R. Horton, Inc., a Delaware corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit "A" or Exhibit "B" for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument executed by the immediately preceding Declarant.

1.11. "General Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund the Common Expenses for the general benefit of all Units in the Community.

1.12. "Governing Documents": A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines as provided for herein, and the Use Restrictions and Rules, each as they may be amended, revised or modified as provided herein.

1.13. "Member": A Person subject to membership in the Association pursuant to Section 3.2 hereof.

1.14. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.15. "Mortgagee": A beneficiary or holder of a Mortgage.

1.16. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the

performance of an obligation. If a Unit is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.17. "Person": A natural person, corporation, limited liability company, joint venture, partnership, trustee, or any other legal entity recognized as a separate legal entity under Georgia law.

1.18. "Plat": The Recorded final plat applicable to the Community or phase of the Community.

1.19. "Record", "Recorded", or "Recording": The appropriate recordation or filing of any document in the Office of the Clerk of the Superior Court of the County of the State of Georgia where the Community is located, or such other place which is designated as the official location for recording deeds and similar documents affecting title to real estate.

1.20. "Recreation Use Agreement": That certain Recreation Facilities and Walking Trail Cross-Easement and Use Agreement, between Brookstone Homeowners Association, Inc., a Georgia non-profit corporation, and the Association, dated May 31, 2013 and Recorded contemporaneously herewith.

1.21. "Special Assessment": Assessments levied in accordance with Section 8.5 hereof.

1.22. "Specific Assessment": Assessments levied in accordance with Section 8.6 hereof.

1.23. "Supplemental Declaration": An instrument Recorded pursuant to Article VII which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.24. "Unit": A portion of the Community, whether improved or unimproved, which is intended for development, use, and occupancy as a residence for a single family. The term shall include within its meaning, by way of illustration but not limitation, each numbered lot shown on a Recorded subdivision Plat with respect to any portion of the Community, together with the structures, if any, constructed thereon, as well as vacant land intended for further subdivision, but shall not include Common Area or property dedicated to the public. The ownership of a Unit shall include, whether or not separately described, membership in the Association and all rights and interest of an Owner to the Common Area.

In the case of a portion of the Community intended and suitable for subdivision into single-family lots but as to which no subdivision Plat has been Recorded, such property shall be deemed to contain the maximum number of Units permitted under the city or county zoning ordinance applicable to the property until such time as a subdivision Plat is Recorded with respect to all or a portion of the property. Thereafter, the portion encompassed by such Plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not Platted shall continue to be treated as set forth in this paragraph.

1.25. "Use Restrictions and Rules": Those use restrictions and rules affecting the Community, which may be adopted, modified, and repealed as set forth in Article X. The initial Use Restrictions and Rules are set forth on Exhibit "C" attached hereto and by this reference incorporated herein.

ARTICLE II

PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Unit, subject to:

(a) This Declaration, a Supplemental Declaration and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying Common Area to the Association;

(c) The right of the Board and the membership to adopt rules regulating the use and enjoyment of the Common Area;

(d) The right of the Association to suspend the right of an Owner to use the Common Area for any period during which any past due assessment against any Unit of the Owner remains unpaid, and for a reasonable period of time for an infraction of the Declaration, By-Laws, Use Restrictions and Rules, Design Guidelines and any rules and regulations promulgated by the Board of Directors;

(e) The right of the Association, acting through the Board, to dedicate or transfer title to all or any part of the Common Area upon the affirmative vote of the Owners of at least two-thirds (2/3) of the Units (other than Units owned by the Declarant) and the consent of Declarant;

(f) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred upon the affirmative vote of the Owners of at least two-thirds (2/3) of the Units (other than Units owned by the Declarant) and the consent of Declarant; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant or the holder of any Mortgage encumbering any Unit or other property in the Community;

(g) Declarant's right to use the Common Area without payment or charge for such purposes as Declarant, in its sole discretion, deems necessary and proper for the development, sale, construction, marketing and build out of the Community;

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

(i) all encumbrances and other matters of Record affecting title to the Common Area including, without limitation, any deed or other document granting the Declarant mineral rights as more particularly set forth in such deed or document;

(j) The right of the Association, acting through the Board, to dedicate portions of the Common Area to any local, state or federal governmental or quasi-governmental entity without the consent of the Members; and

(k) The rights of others to use and enjoy portions of the Common Area pursuant to the Recreation Use Agreement.

Any Owner may extend or delegate his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property, which may or may not be subject to this Declaration.

2.3. Condemnation. If any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation by any authority having the

power of condemnation or eminent domain, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine in its sole discretion.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

3.1. Function of Association. The Association shall be the entity responsible for the management, maintenance, operation, and control of the Area of Common Responsibility and enforcement of the Governing Documents and shall perform its functions in accordance with the Governing Documents and the laws of the State of Georgia, including, without limitation, the Georgia Nonprofit Corporation Code, O.C.G.A. Section 14-3-101, *et seq.*

3.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 hereof and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners as set forth herein, in the By-Laws and any rules and regulations adopted by the Board. The membership rights of an Owner, which is not a natural person, may be exercised by any officer, director, partner, manager, member or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Association's Secretary. Membership shall be appurtenant to and shall not be separated from ownership of a Unit.

3.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one (1) equal vote for each Unit in which they hold the interest required for membership as provided in Section 3.2 above. When more than one Person holds an ownership interest in any Unit, the vote for such Unit shall be exercised as those Owners themselves determine and advise the Association's Secretary prior to any meeting. The vote attributable to a Unit shall be suspended in the event that more than one Person seeks to exercise it. The Board shall have the right to suspend the voting rights of an Owner for any period during which any past due assessment against any Unit remains unpaid and for a reasonable amount of time for an infraction of the Governing Documents.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member are set forth in relevant provisions of the Declaration

and By-Laws. The rights of Declarant, as the Class "B" member, shall be of no further force and effect on the date that the Declarant no longer owns any property primarily for development or sale and no longer has the right to unilaterally annex additional property to the provisions of this Declaration as provided in Section 7.1 hereof; provided, however, the Class "B" Member, may in its sole discretion, relinquish certain authority granted to it under the Declaration, By-Laws and Articles of Incorporation while retaining authority over others. For example and without limitation, the Declarant may terminate its right to appoint and remove the officers and directors of the Association, but reserve all other rights under the Declaration. Any right, power or authority of the Declarant which may be terminated or relinquished prior to the termination of the rights of Declarant hereunder shall be by written Recorded instrument only and no such right, power or authority shall be relinquished or terminated by implication or otherwise.

Notwithstanding anything to the contrary herein, the Declarant shall be entitled to cast one (1) vote for each Unit owned.

ARTICLE IV

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and maintain the Common Area and all improvements located and constructed thereon, including, without limitation, the Community entry features and all storm water detention/retention ponds serving the Community, in a manner consistent with the Community-Wide Standard, as more particularly set forth in Section 5.1(a) hereof, subject to any restrictions set forth in the deed or other instrument conveying property to the Association, if any. The Board is specifically authorized, but not obligated, to retain or employ a professional management agent to assist in carrying out the Association's responsibilities under the Governing Documents, the cost of which shall be a Common Expense.

4.2. Personal Property and Real Property for Common Use.

The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant or its designees or successors-in-title may transfer or convey to the Association interests in real or personal property within or for the benefit of the Community, and the Association shall accept such transfers and conveyances. All such property shall be accepted by the Association "AS IS" without any representation or warranty, express or implied, in fact or by law, with respect thereto, or with respect to the improvements located or constructed thereon or thereto, and without any representations or warranties regarding future repairs or regarding the condition, construction, accuracy,

completeness, design, adequacy of the size or capacity in relation to the utilization, date of completion, or the future economic performance or operations of, or the materials which have been or will be used in such property or repairs. Upon the written request of Declarant, the Association shall reconvey, without a vote of the Members, to Declarant any unimproved portions of the Common Area originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to adjust property lines or accommodate changes in the development plan.

The Association hereby appoints Declarant as its agent and attorney-in-fact to accept on behalf of the Association any such conveyance to the Association, to reconvey any such property on behalf of the Association and to execute on behalf of the Association any and all documents, including, without limitation, deeds, necessary or convenient to effectuate and document any such conveyance to or reconveyance from the Association. Neither the Recordation of any subdivision Plat nor the use by the Owners or maintenance of the Association of any property shall create any rights, easements or licenses in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or the owner of such property to the Association or the Owners, as the case may be, by a Recorded instrument.

4.3. Enforcement. The Declarant or the Association may impose sanctions for violations of the Governing Documents in accordance with procedures set forth in the By-Laws, including the imposition of reasonable monetary fines, the suspension of the right to vote and the suspension of an Owner to use and enjoy the Common Area. Any such suspension shall not effect the Owner's obligation to pay assessments coming due during the period of suspension.

In addition to any other remedies provided for herein, the Association, the Declarant, the Architectural Review Committee or their respective duly authorized agents shall have the power to enter upon any Unit or any other portion of the Community to abate or remove any structure, thing, improvement or condition which violates the Governing Documents. Unless an emergency situation exists, the violating Owner shall be given ten (10) days written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the Unit of the violating Owner as a Specific Assessment. The Declarant, the Association, the Architectural Review Committee and their duly authorized agents shall not be liable for damages to Person or property from exercising the rights set forth in this Section 4.3, including, without limitation, claims for damages resulting from the removal of a nonconforming structure, improvement, thing or condition.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. If the Association prevails in any action to enforce the provisions of the Governing Documents or Association rules and regulations, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action. So long as the Declarant owns any property described on Exhibit "A" or Exhibit "B" or has the right to unilaterally annex additional property to the provisions of the Declaration, the Declarant may, but shall not be obligated to, take any enforcement action, or exercise any right on behalf of or independent from the Association; which action, shall include, but not be limited to the imposition of monetary fines. In the event that monetary fines are imposed, only one such fine may be imposed for a single violation such that an Owner or occupant may not be fined by the Declarant and the Association for a single violation. In the event fines or other sanctions are imposed by the Declarant hereunder, the Declarant shall have any and all rights to collect such fines or sanctions (which fines shall be payable to the Association) and any related charges, including, without limitation, attorneys' fees actually incurred and costs of collection in the same manner as provided herein for the collection of assessments.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, inconsistent with the overall scheme of development for the Community or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking such enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision in the future or under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and local governments may enforce their ordinances within the Community.

4.4. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests. For so long as Declarant owns any property described on Exhibit "A" or Exhibit "B," Declarant may designate sites within the Community for fire, police, and utility facilities; public schools and parks; and other public or quasi-public facilities. The sites may include Common Area, in which case the

Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant.

4.6. Indemnification.

(a) The Association shall indemnify every officer, director, and committee member, including members of the Architectural Review Committee established under Article IX hereof, against all damages and expenses, including attorneys fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Georgia law.

(b) The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available, as more particularly provided in Article VI hereof.

(c) Decisions whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party. In deciding whether to bring a civil action against another party, a director is protected by the business judgment rule as explained in Section 3.25 of the By-Laws.

4.7. Safety and Security. Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property within Heatherbrooke. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. Notwithstanding the foregoing, the Association, Declarant and their respective officers, directors, employees, representatives and agents shall not in any way be considered insurers or guarantors of safety or security within the

Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. The obligation to provide security lies with each Unit Owner individually.

No representation or warranty is made that any security system or measures cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Unit, that the Association, its Board of Directors and committees, Declarant and their respective officers, directors, employees, representatives and agents are not insurers or guarantors of safety or security and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

4.8. Recreation Use Agreement. As set forth in the Recreation Use Agreement, the Members of the Association are entitled to use the recreational facilities owned and operated by the Brookstone Homeowners Association, Inc., and the members of the Brookstone Homeowners Association, Inc., are entitled to use the walking trails within the Common Area. The Association shall fulfill its obligations under the Recreation Use Agreement, including, without limitation collecting the Use Fee (as such term is defined in the Recreation Use Agreement) as a part of the General Assessment and paying such Use Fees to the Brookstone Homeowners Association, Inc., in a timely manner as set forth in the Recreation Use Agreement. No Owner may exempt himself from liability for the Use Fee for any reason, including, without limitation, non-use of the recreational facilities, abandonment of his Unit, or any other means.

ARTICLE V MAINTENANCE

5.1. Association's Responsibility.

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(i) the Common Area, including, without limitation, any open space, and all landscaping, signage, lighting, irrigation systems and equipment, fences, walls, and other structures and improvements, sidewalks, paths, and trails, situated upon the Common Area;

(ii) any perimeter fencing in the Community, regardless of whether the same is located on Units or Common Area;

(iii) landscaping, signage, and sidewalks within public rights-of-way within or adjacent to the Community, except to the extent that such responsibility is assumed by a governmental or quasi-governmental body or public utility;

(iv) all drainage ponds, storm water retention/detention ponds, or detention systems for the Community and any gate, fence or other enclosure surrounding said storm water retention or detention ponds, regardless of whether the same is located on a Unit or Common Area, if and to the extent maintenance is required in the Board's opinion and such area is not maintained by a governmental entity or third party; provided, however, each Unit Owner, and not the Association, shall be responsible for the maintenance and/or repair of all storm water drainage facilities located on and exclusively serving said Unit;

(v) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for the maintenance thereof entered into by the Association (including any agreement with any governmental or quasi governmental entity);

(vi) any Community entry features, regardless of whether the same are located on Units or Common Area, and any landscaping, monument, lighting and irrigation systems related thereto; and

(vii) so long as Declarant owns any property in the Community or has the right to annex additional property to the Declaration as provided herein, any property and facilities owned by Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from Declarant to the Association and to remain a part of the Area of Common Responsibility and to be maintained by the Association unless and until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and shall have the right to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit Owners. The Board of Directors may authorize the officers of the Association to enter into contracts with any Person or

Persons to perform any maintenance under this Declaration on behalf of the Association.

(b) Association Easement. There are hereby reserved to the Association blanket easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under Section 5.1. The Association shall maintain the facilities and improvements within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing seventy-five percent (75%) of the total votes in the Association and the Declarant, so long as Declarant owns any property within the Community, agree in writing to discontinue such maintenance.

Except as provided above, the Area of Common Responsibility and the Association's maintenance responsibility with respect thereto shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of Declarant as long as Declarant owns any property described on Exhibit "A" or Exhibit "B" of this Declaration.

(c) Maintenance Expenses. Except as otherwise provided herein, all costs associated with the Association's maintenance responsibilities for the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. Notwithstanding the foregoing, in the event the Association determines that the need for maintenance, repair or replacement, which is the Association's responsibility as set forth herein, is caused through the willful or negligent act of an Owner or the occupants, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair and replacement and all costs thereof not paid for by insurance shall be assessed against the Owner and the Unit as a Specific Assessment.

5.2. Owner's Responsibility.

(a) General. Each Owner shall maintain his or her Unit and all structures, parking areas, and other improvements, including, without limitation, landscaping, comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by the Association or assigned to the Association pursuant to this Declaration, any Supplemental Declaration, or other covenants applicable to such Unit. The maintenance obligation of an Owner shall include, without limitation, the following: (i) the prompt removal of all litter, trash, refuse, and waste; (ii) lawn mowing on a regular

basis; (iii) tree and shrub pruning; (iv) watering landscaped areas; (v) keeping improvements, and exterior lighting in good repair and working order; (vi) keeping lawn and garden areas alive, free of weeds, and attractive; (vii) keeping driveways in good repair; (viii) complying with all governmental health and police requirements; (ix) repair of exterior damages to improvements, including, without limitation, periodic painting and pressure washing as needed; and (x) maintenance, repair and replacement of all storm water drainage facilities and all pipes, wires, conduits and plumbing which are located on and exclusively serve a Unit.

(b) Failure to Maintain. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement to the Unit at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-day period, to commence such work which shall be completed within a reasonable period of time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement to the Unit and all costs thereof shall be assessed against the Owner and the Unit as a Specific Assessment.

5.3. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include the responsibility for repair and replacement, as necessary. All maintenance performed by the Association and Unit Owners, as applicable, shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, conditions and restrictions set forth in this Declaration.

5.4 Liability. Owners, occupants and their guests shall use the Common Area and all portions of the Community not contained within a Unit at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. All Owners and occupants shall have an affirmative duty and responsibility to inspect the Common Area and all portions of the Community not contained within a Unit for any defects, perils or other unsafe conditions relating to the use and enjoyment thereof. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person occurring on the Common Area, nor for loss or damage to personal belongings used or stored thereon or any other portion of the Community. Neither the Association, the Declarant nor their respective officers, directors, employees, representatives and

agents shall be liable for injury or damage to any Person or property: (a) caused by the elements or by an Owner or any other Person; (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association or from any portion of the Common Area; or (c) caused by any street, pipe, plumbing, drain, pond, lake, conduit, appliance, equipment, security system or utility line or facility, the responsibility for the maintenance of which is that of the Association becoming out of repair. Nor shall the Association, the Declarant or their respective officers, directors, agents, employees or representatives be liable to any Owner or occupant for loss or damage, by theft or otherwise, of any property of such Owner or occupant.

ARTICLE VI

INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering the full replacement cost of all insurable improvements from "risks of direct physical loss" for the Common Area and on other portions of the Area of Common Responsibility to the extent that the Association has responsibility for maintenance, repair, and/or replacement in the event of a casualty, regardless of ownership;

(ii) Commercial general liability insurance insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and umbrella coverage) shall have a limit of at least \$500,000.00 per occurrence with respect to bodily injury, and property damage; provided however, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits; and

(iii) Such other insurance such as workers compensation, directors and officers liability coverage, and fidelity insurance as the Board, in the exercise of its business judgment, determines advisable.

Nothing in this Section 6.1 shall be construed as obligating the Association to obtain casualty insurance or any other insurance for any portion of a Unit or any structure or improvement located thereon or a Unit Owner's or occupant's personal property; the responsibility of the same shall be that of the Unit Owner as provided in Section 6.2 hereof

(b) Policy Requirements. The Association shall arrange for a periodic review of the sufficiency of insurance coverage. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon written request, to any Member. The policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may levy a Specific Assessment of the full amount of such deductible against such Owner(s) and their Units.

The Board is authorized to obtain the insurance coverage specified in this Declaration through the Declarant and reimburse the Declarant for the cost thereof. Insurance obtained by or through the Declarant shall satisfy all insurance responsibilities of the Board.

To the extent available at reasonable cost and terms, all Association insurance shall:

- (i) be written with a company authorized to do business in the State of Georgia which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
- (ii) be written in the name of the Association as trustee for the Owners, who shall be insured under such policy to the extent of the Owners' interest;
- (iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- (iv) contain an inflation guard endorsement; and
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, and the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and,

(vi) a provision vesting in the Board exclusive authority to adjust losses.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Community covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage or destruction, allowing for changes or improvements necessitated by changes in applicable use or building codes. Any damage to or destruction of improvements on the Common Area shall be repaired or reconstructed unless Members representing at least sixty-seven percent (67%) of the total votes in the Association, and Declarant, so long as Declarant owns property described in Exhibit "A" or Exhibit "B," decide not to repair or reconstruct within ninety (90) days after the loss. If the Association determines that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard and this Declaration.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

6.2. Owners' Insurance. Each Owner shall be responsible for insuring his or her own Unit and any structures or improvements located thereon and any property owned and/or maintained by the Owner or the occupants of its Unit, their respective family members, guests, or invitees, within the Unit or elsewhere in the Community.

In the event of damage to or destruction of improvements or structures on or comprising a Unit, the Owner shall, within one hundred eighty (180) days thereafter, complete the repair or reconstruction of the damaged structures or improvements in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX or, in the alternative, the Owner shall clear the Unit of all debris and ruins and thereafter maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard and this Declaration. The Owner shall pay any costs not covered by insurance proceeds.

Neither the Association, the Declarant nor their respective agents, representatives, officers, directors and employees shall bear any responsibility for the maintenance or safekeeping of personal property of any Owner or occupant of a Unit, their family, guests, or invitees, nor shall the Association, Declarant or their respective officers, directors, employees, agents and representatives be held liable for the conditions of, or any loss or damage to, any such personal property except to the extent directly attributable to the reckless acts or willful misconduct of the Association, Declarant, or their respective agents or employees.

ARTICLE VII

ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1. Annexation Without Approval of Membership. Until all of the property described on Exhibit "B" has been subjected to this Declaration or twenty (20) years after the Recording of this Declaration, whichever is earlier, Declarant may, from time to time, unilaterally subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in Exhibit "B." Declarant may transfer or assign the right to annex property, provided that such transfer or assignment is memorialized in a written, Recorded instrument executed by Declarant.

Annexation shall be accomplished by Recording a Supplemental Declaration describing the property being annexed. Such Supplemental Declaration shall not

require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for Record of such Supplemental Declaration unless a later effective date is provided therein. Nothing in this Declaration shall be construed to require the Declarant to annex or develop any of the property set forth in Exhibit "B".

7.2. Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration by Recording a Supplemental Declaration with the consent of: (a) the owner of such property; (b) the affirmative vote of Members representing at least two-thirds (2/3) of the total votes in the Association present in person or by proxy at a meeting duly called for such purpose; and (c) the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 7.1 hereof. Such annexation shall be accomplished by Recording a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by: (x) the President and the Secretary of the Association; (y) by the owner of the property to be annexed; and (z) by Declarant, if Declarant's consent is required. Any such annexation shall be effective upon the filing of Record of such Supplemental Declaration unless a later effective date is provided therein.

7.3. Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Section 7.1 hereof, for the purpose of removing any portion of the Community from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community. Any such withdrawal shall be accomplished by the filing of an amendment to the Declaration describing the property to be removed from the Declaration and jurisdiction of the Association and such amendment shall be effective upon Recordation unless a later effective date is provided therein. Such amendment shall not require the consent of any Person other than: (a) the Declarant; and (b) the Owner of the property to be withdrawn, if not Declarant.

7.4. Additional Covenants and Easements. Declarant may subject any portion of the Community to additional covenants and easements by Recording a Supplemental Declaration, concurrent with or after the annexation of the subject property, setting forth such additional covenants and easements on the property described therein. Any such Supplemental Declaration shall require the written consent of the Declarant and the owner(s) of the subject property, if other than Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

ARTICLE VIII
ASSESSMENTS

8.1. Creation of Assessments.

(a) Types. There are hereby created, and the Association is authorized to levy, three types of assessments: (a) General Assessments as described in Section 8.3; (b) Special Assessments as described in Section 8.5; and (c) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Community, is deemed to covenant and agree to pay these assessments.

(b) Personal Obligation and Lien. All assessments, together with interest (computed from the due date of such assessment at a rate of ten percent (10%) per annum or such higher rate as the Board may establish, subject to the limitations of Georgia law), late charges (in an amount established by Board resolution), costs of collection, and reasonable attorneys' fees actually incurred, shall be a charge and continuing lien upon each Unit and also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to the date of such acquisition of title. The Recording of this Declaration shall constitute Record notice of the existence of a lien and no further Recordation of any lien shall be required.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at the closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. The General Assessment shall be an annual assessment due and payable in advance on the first day of each fiscal year; provided, the Board may by resolution permit payment in two or more installments. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may, upon ten (10) days written notice, accelerate the installments and require the General Assessment to be paid in full immediately. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments. As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of assessments and fees arising hereunder shall also include the costs of collection, including, without limitation, reasonable attorneys fees actually incurred and the award of attorneys fees shall not be construed in accordance with O.C.G.A. Section 13-1-11(a)(2).

Except as provided in Section 8.8 hereof, no Owner may exempt himself from liability for assessments for any reason, including, without limitation, non-use of Common Area, abandonment of his Unit, or any other means. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes. The obligation to pay assessments is a separate and independent covenant on the part of each Owner.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with Declarant or other entities for payment of Common Expenses.

8.2. Declarant's Obligation for Assessments; Budget Deficit During Declarant Control. Declarant shall not be liable for the payment of assessments on its unsold Units. However, Declarant may, but shall not be obligated to, annually elect to contribute to the Association the difference between the amount of assessments levied on all other Units subject to assessment and the amount of the Association's actual expenditures during the fiscal year (a "Subsidy"). Any Subsidy may be treated, in Declarant's discretion, as either: (a) a voluntary contribution; (b) an advance against future assessments (if any); or (c) a loan by Declarant to the Association. A Subsidy may be evidenced by one or more promissory notes from the Association in favor of Declarant or Declarant may cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community; provided, however, no Mortgage secured by the Common Area or any of the improvements maintained by the Association shall be given in connection with such loan. Any Subsidy shall be disclosed as a line item expense in the Common Expense budget. The payment of a Subsidy in any year shall under no circumstances obligate Declarant to continue payment of such Subsidy in future years.

8.3. Computation of Budget and General Assessments. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year. General Assessments shall be fixed at a uniform rate for all Units subject to assessment under Section 8.8. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including the surplus from prior years and any assessment income expected to be generated from any additional Units, if any.

The budget and notice of the amount of the General Assessment for the following years shall be available to each Owner at least thirty (30) days prior to the due date of the General Assessment or any installment thereof. The budget and the General Assessment shall become effective unless disapproved at a meeting by at least sixty-

seven percent (67%) of the total vote of the Association and by the Declarant, so long as the Declarant owns any property described on Exhibit "A" or Exhibit "B." There shall be no obligation to call such a meeting unless a petition for a special meeting is presented to the Board within ten (10) days of the delivery of the notice of the General Assessment.

If a budget is not adopted for any year, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year.

8.4. Reserve Budget and Capital Contribution.

(a) Reserve Budget. The Board may prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. If established, the Board shall include as a line item in the Common Expense budget a capital contribution in an amount sufficient to meet the Association's projected needs over the budget period. There shall be no obligation to establish a reserve budget and make such assessments. If reserves are not established or are insufficient for the repair or replacement of any capital asset, Special Assessments may be levied as provided in Section 8.5 hereof.

(b) Capital Contribution. Upon every conveyance of title for every Unit in the Community after a certificate of occupancy has been issued for the residential dwelling located thereon, a capital contribution in the amount of Five Hundred and No/100 Dollars (\$500.00) ("Initiation Fee") shall be made by or on behalf of the new Owner to the Association as set forth below. The Initiation Fee shall be a Specific Assessment against the Unit and shall be in addition to, not in lieu of, any General or Special Assessments. The Initiation Fee shall be payable at closing, shall not be prorated, and the Association shall have all rights under the Declaration for enforcement of such Specific Assessment if it is not paid. In the event the Initiation Fee is not paid at closing, it shall be paid immediately upon demand by the Association. The Initiation Fee may be used by the Association for any purpose which provides a direct benefit to the Community, including, without limitation, for the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions of this Declaration. The Initiation Fee shall not apply to the holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, but shall apply to the Owner acquiring the Unit from the foreclosing Mortgagee.

8.5. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments against all Owners in the Community from

time to time to cover unbudgeted or unanticipated expenses or expenses in excess of those budgeted. Except for Special Assessments authorized under Section 6.1 hereof, any Special Assessment which would exceed the amount of the General Assessment attributable to a Unit in any fiscal year shall require the affirmative vote or written consent of a majority of the total votes in the Association, and the written consent of Declarant, so long as Declarant owns any property described on Exhibit "A" or Exhibit "B." Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Special Assessments shall be levied equally on all Units subject to assessment under Section 8.8.

8.6. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit or Units as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants in the Community (which might include, without limitation, landscape maintenance or pest control), which assessments may be levied in advance of the provision of the requested benefit, item, or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws, Design Guidelines, Use Restrictions and Rules or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided prior to the imposition of any monetary fines, the Board shall provide the Unit Owner with prior written notice and an opportunity for a hearing, in accordance with Section 3.24 of the By-Laws. Fines, the Initiation Fee and the cost of maintenance performed by the Association which is the responsibility of a Unit Owner shall be Specific Assessments.

In addition to the foregoing, the Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Units may be specifically assessed equitably among all of the Units which are benefited according to the benefit received; and (b) expenses of the Association which benefit all Units, but which do not provide an equal benefit to all Units, may be assessed equitably among all Units according to the benefit received.

8.7. Nonpayment of Assessments; Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges, costs of collection, and reasonable attorneys' fees actually incurred. Such lien shall be superior to all other liens, except: (a) the liens of all taxes,

bonds, assessments, and other levies which by law would be superior; and (b) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages are foreclosed under Georgia law.

Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge (in an amount established by Board resolution), interest (computed from the due date of such assessment at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Georgia law) and costs of collection, including, without limitation, reasonable attorney's fees actually incurred. As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of assessments and fees arising hereunder shall also include the costs of collection, including, without limitation, reasonable attorneys fees actually incurred and the award of attorneys fees shall not be construed in accordance with O.C.G.A. Section 13-1-11(a)(2).

The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a claim of lien with the Office of the Clerk of Superior Court of Cobb County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments. The Association may also suspend the membership rights of an Owner, including the right to vote and the right to use and enjoy the Common Area and the right to receive any services provided to such Unit by the Association, if any. Any suspension shall not affect such Owner's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such Unit in favor of the Association.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While the Association owns a Unit following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the General Assessment that would have been charged to the foreclosed Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments arising prior to such sale or transfer. A Mortgagee

or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit arising prior to the date of acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.8.

8.8. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month following the transfer or conveyance of a Unit which has been issued a certificate of occupancy by the appropriate governmental agency to a Person intending to occupy said Unit for residential use or use such Unit for residential purposes. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit. Any Unit which has been approved by Declarant for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant or any other Person, so long as such Unit is approved for use as a model home.

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

8.10. Exempt Property. The following property shall be exempt from the payment of assessments:

- (a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1;
- (b) Any property dedicated to and accepted by any governmental authority or public utility;
- (c) Any property acquired by the Association at a foreclosure sale as set forth in Section 8.7 hereof; and
- (d) Any Unit which has not been issued a certificate of occupancy by the appropriate governmental agency and has not been conveyed to a Person intending to occupy said Unit for residential use or use such Unit for residential purposes, as provided in Section 8.8 hereof.

8.11 Estoppel Letter. The Association shall, upon request and within five (5) business days after receiving a written request therefor, certify to the amount of any unpaid assessments constituting a lien on a specified Unit. A certification letter signed by an officer of the Association or its managing agent, if any, shall be conclusive evidence of payment and shall be binding on the Association as to the amount of assessments due with respect to the Unit. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate. The Association shall comply with O.C.G.A. Section 44-3-232(d) which shall control if in conflict with the provisions of this Section 8.11.

ARTICLE IX

ARCHITECTURAL STANDARDS

9.1. General. No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, other site work, exterior alteration of existing improvements, painting or modifying fences, and planting or removing landscaping materials) shall take place on a Unit except in compliance with this Article and upon the approval of the appropriate entity under Section 9.2. Notwithstanding the foregoing, the Board may, by resolution, exempt certain activities from the application and approval requirements of this Article provided such activities are undertaken in strict compliance with the requirements of such resolution. Any Owner may remodel, paint, or redecorate the interior of structures on his Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on a Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure located on a Unit in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of Declarant or the Association.

9.2. Architectural Review. So long as Declarant owns any property described in Exhibit "A" or Exhibit "B" for development and/or sale or has the right to annex additional property to the provisions of the Declaration as provided in Section 7.1 hereof, Declarant shall have the exclusive authority to administer and enforce the architectural controls under this Article and to review and act upon all applications for construction and modifications within the Community. There shall be no surrender or assignment, in whole or in part, of the rights of Declarant in this Article IX by implication or otherwise, except in a Recorded instrument terminating or assigning the rights granted pursuant to this Article IX.

Upon the expiration of Declarant's authority to control architectural review for all or a portion of the Community, the Board shall create and appoint an Architectural Review Committee ("ARC"), which shall have authority over

modifications, additions, or alterations made on or to existing structures or Units. The ARC shall consist of either three (3) or five (5) persons, determined in the sole discretion of the Board, who shall serve and may be removed in the Board's discretion. Notwithstanding anything to the contrary herein, until Declarant's authority expires as provided herein, the ARC shall have no rights or authority except as Declarant may assign in a written instrument.

For the purposes of this Article IX, the entity having jurisdiction in a particular case (the Declarant or the ARC, as the case may be) shall be referred to as the "Reviewer." The Reviewer may delegate certain rights and responsibilities to qualified individuals to act on its behalf, and their compensation, if any, shall be established from time to time by Declarant or the Board, as applicable.

9.3. Guidelines and Procedures.

(a) Design Guidelines. Declarant may prepare architectural standards or design guidelines ("Design Guidelines") for the Community. The Design Guidelines are not the exclusive basis for decisions but they may provide guidance on specific matters relating to construction activity and modifications to structures located on Units in the Community. Declarant shall have sole and full authority to adopt or amend the Design Guidelines as long as it owns any property described on Exhibit "A" or Exhibit "B." Thereafter, the ARC shall have the authority to amend the Design Guidelines with the consent of the Board. Owners shall conduct any construction or modification in accordance with the Design Guidelines.

All Owners and occupants of Units are given notice that the use of their Unit(s) is limited by the Design Guidelines, as they may be expanded, modified or amended hereunder. Each Owner, by acceptance of a deed or entering into and Recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit may be affected and that the Design Guidelines may change from time to time, and that such changes may not be reflected in a Recorded instrument.

(b) Procedures. Prior to commencing any activity subject to review under this Article IX, an Owner shall submit an application for approval of the proposed work to the Reviewer. Such application shall be in the form required by the Reviewer and shall include plans and specifications showing the site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation system, utility facilities layout, and other features of proposed construction, as applicable (collectively, the "Plans") and any other information the Reviewer may reasonably require. Before the Owner may begin the proposed work, the application and Plans must be approved in accordance with the procedures described below. In addition to the foregoing, the Reviewer may charge a review fee, to be paid

in full prior to reviewing the Plans to cover the reasonable costs incurred in having the application and Plans reviewed by architects, engineers or other professionals.

In reviewing each submission, the Reviewer may consider whatever factors it deems relevant, including, but not limited to, harmony of external design with surrounding structures and environment and location in relation to surrounding structures, topography, and finish grade elevation. Decisions of the Reviewer may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are purely subjective and may vary over time and among different Persons. The Reviewer may require relocation of native plants within the construction site, screening, and landscaping as a condition of approval of any submission.

The Reviewer shall respond in writing to an application within sixty (60) days of receipt thereof at an address specified by the Owner at the time of submission. The response may: (i) approve the application and Plans in their entirety; (ii) approve a portion of, segments or features of the Plans, and disapprove other portions; or (iii) disapprove the application and Plans which are deemed to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines. The Reviewer may, but shall not be obligated to, set forth the reasons for such finding, and it may make suggestions to cure objections to an application. In the event the Reviewer fails to respond within sixty (60) days, approval shall be deemed to have been given; provided, no construction which is inconsistent with the Governing Documents shall be deemed approved unless a written variance has been issued. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

If construction does not commence on a project which has been approved within one hundred eighty (180) days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval. If construction is not completed on a project for which plans have been approved within a period set forth in the Design Guidelines or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article and the Owner will need to submit the Plans to the Reviewer for reconsideration.

9.4. No Waiver of Future Approvals. Each Owner acknowledges that the Reviewer will change from time to time and that interpretation, application, and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, Plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.5. Variance. The Reviewer may authorize variances in writing from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship, or aesthetic or environmental considerations, and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration, the development of the Community, and compatible with existing and anticipated uses of adjoining properties. For purposes of this Section, the inability to obtain governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance.

9.6. Limitation of Liability. The requirements and procedures established by this Article are intended to enhance the overall aesthetics of the Community and shall not create any duty to any Person. The Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, permitting requirements, zoning conditions and other governmental requirements or local ordinances or rules governing construction in the Community, nor for ensuring the appropriateness of soils, drainage, and general site work. Neither Declarant, the Association, the Board, any committee, nor any other officer, member, employee, representative or agent of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit or for any violation of building codes, permitting requirements, zoning conditions or violations of applicable governmental laws and ordinances. In all matters, the Association shall defend and indemnify Declarant, the reviewing body, and their members.

9.7. Enforcement. Any structure, improvement or landscaping improvement placed or made in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Declarant or the ARC, as the case may be, Owners shall, at their own cost and expense, remove such nonconforming structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, Declarant or the Board shall have the right to Record a notice of violation and to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the Owner and Unit and collected as a Specific Assessment. In addition, the Reviewer shall have the right to enter a Unit to determine whether these restrictive covenants are being complied with and such conduct shall not be deemed a trespass. The Reviewer, the Declarant, the Board, the ARC and their respective officers, directors, members, employees, agents or representatives shall not be liable for claims of damage associated

with the removal of the nonconforming structure or improvement in accordance with the procedures set forth herein.

Unless otherwise specified in writing by the Reviewer, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment. Neither the Declarant, the ARC, the Association nor their officers, directors, employees or agents shall be held liable for any claims resulting from removing or completing the incomplete work as provided herein.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Community, subject to the notice and hearing procedures contained in the By-Laws.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Reviewer, including, without limitation, the right to levy and collect fines as provided herein, subject to applicable notice provisions.

ARTICLE X

USE RESTRICTIONS AND RULES

10.1. Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Community in order to enhance all Owners' collective interests, subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, and desires within the Community. The initial Use Restrictions and Rules attached as Exhibit "C," establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests, and invitees of any Unit. Any lease agreement for the lease of a Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of the Governing Documents.

10.2. Authority to Promulgate Use Restrictions and Rules. The initial Use Restrictions and Rules applicable to all of the Community are attached as Exhibit "C" to this Declaration and may be modified in whole or in part, repealed, or expanded as follows:

(a) By the Board. Subject to the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial Use Restrictions and Rules by a majority vote of the directors at any Board meeting. The Board shall send notice by mail to all Owners concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such proposed rule or restriction shall become effective unless disapproved at a meeting duly called for such purpose by Members representing at least fifty-one percent (51%) of the total Association vote and by Declarant, so long as Declarant owns any property described on Exhibit "A" or Exhibit "B," subject to the notice provision in Section (c) hereof. The Board shall have no obligation to call a meeting of the Members to consider disapproval of a proposed amendment, modification or expansion of the Initial Use Restrictions except upon petition of the Members as required for special meetings in the By-Laws.

(b) By the Members. Alternatively, the Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Members representing at least fifty-one percent (51%) of the total votes in the Association and the approval of Declarant, so long as Declarant owns any property described on Exhibit "A" or Exhibit "B."

(c) At least thirty (30) days prior to the effective date of any action taken under subsections (a) or (b) of this Section 10.2, the Board shall send a copy of the newly-adopted rule to each Owner. The Association shall provide, without cost, a copy of the new Use Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(d) The foregoing procedures shall not apply to the enactment and enforcement of administrative rules and regulations governing the use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, landscape maintenance to the Common Area. The Board has the right to enact, amend, and enforce such administrative rules and regulations.

(e) The foregoing procedures shall not restrict or apply to amendments to this Declaration as provided in Section 15.2 or the Design Guidelines enacted under Section 9.3.

10.3. Owners' Acknowledgment. All Owners and occupants of Units are given notice that use of their Unit or Units is limited by the Use Restrictions and Rules as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into and Recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected, that the Use Restrictions and Rules may change from time to time, and that any modification, expansion or cancellation may not be reflected in a Recorded instrument.

10.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment), neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Similar Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Signs. No sign of any kind shall be erected by an Owner or occupant within the Community without the prior written consent of the Reviewer or in accordance with the Design Guidelines. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. The Board shall have the right to impose reasonable, time, place and manner restrictions governing the display of signs in the Community. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Unit as a purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof. The Board may impose a fine of One Hundred Fifty and No/100 Dollars (\$150.00) per day for the display of any sign which violates this provision and is not removed within twenty-four (24) hours after written demand is delivered to the Owner at that Unit.

(c) Holiday Displays. The Board may adopt rules governing or prohibiting the display of religious and holiday signs, symbols, and decorations outside structures, and may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(d) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of a dwelling located on a Unit, except that the Association may, in its sole discretion, prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that: (i) create monetary costs for the Association, including, without limitation, any increase in Association insurance premiums or other Owners; (ii) create a danger to the health or safety of others; (iii) generate excessive noise or traffic; (iv) create unsightly conditions visible outside the dwelling; or (v) create an unreasonable source of annoyance.

(f) Alienation; Leasing of Units. No rule shall prohibit the leasing or transfer of any Unit, or require the consent of the Association or Board for the leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term. All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents; however, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease; and provided, further nothing herein shall prohibit the Declarant or the Association from Recording an amendment to the Declaration prohibiting leasing or limiting the number of Units which may be leased at one time in accordance with Section 15.2 hereof.

Within seven (7) days of entering into a lease agreement for the lease of a Unit, the Owner shall provide the Board with the following information: (i) a copy of the fully executed lease agreement; (ii) the telephone number of the lessee; (iii) the names and addresses of all occupants of the Unit; (iv) the address and telephone number of the Owner other than at the Unit; and (v) such other information as the Board may reasonably require.

Every Owner agrees to cause all occupants of his or her Unit to comply with the Declaration, By-Laws, Design Guidelines and the rules and regulations adopted pursuant thereto and is responsible for all violations caused by such occupants, notwithstanding the fact that such occupants of the Unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, Design Guidelines and rules and regulations adopted pursuant thereto. In the event that the lessee or a person living with the lessee violates the Declaration, By-Laws, 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 Declaration and By-Laws. If the fine is not paid by the lessee within the time period established by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay such fine. Unpaid fines shall constitute a lien against the Unit.

If a Unit Owner who is leasing his or her Unit fails to pay any General Assessment, Special Assessment or Specific Assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid General Assessments, Special Assessments and Specific Assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. Nothing herein shall be construed as releasing the Owner from the obligation to pay assessments required under this Declaration.

(g) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Community.

(h) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

(i) Activities Incidental to Construction. No rule or action by the Association shall impede Declarant or builders authorized by Declarant or other Owners with the consent of the Declarant from maintaining upon the Common Area and Units which they own any facilities necessary or incidental to the construction or sale of Units. By way of example and not limitation, no rule shall prohibit Declarant or builders authorized by Declarant from installing signs, maintaining temporary structures for use during construction of a Unit, including, without limitation, construction trailers and sales trailers, from using any dwelling on a Unit as a sales office or from maintaining model homes or speculative housing on Lots within the Community.

(j) No Discrimination. No rule shall have the effect of discriminating against any Person on the basis of race, creed, color, national origin, religion, sex, familial status or handicap.

The limitations in this Section 10.4 shall apply only to Use Restrictions and Rules adopted or amended in accordance with Section 10.2; they shall not apply to amendments to this Declaration adopted in accordance with Section 15.2.

ARTICLE XI

EASEMENTS

11.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2. Easements for Utilities, Etc.

(a) There are hereby reserved to Declarant, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Community (but not through any structure located on a Unit) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining, and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways, and trails; drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which Declarant or the Association owns or within easements designated for such purposes on Recorded Plats of the Community.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Community for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters, and boxes, as applicable. The Board of Directors, without a vote of the Owners, shall have the right, power and authority to grant permits, licenses, utility easements and other easements, permits or licenses necessary or desirable for the proper maintenance or operation of the Community under, through, or over the Units and/or the Common Area as may be reasonably necessary to or desirable for the ongoing operation of the Community.

(b) There is hereby reserved to Declarant, so long as Declarant owns any property described on Exhibit "A" or Exhibit "B" of this Declaration, the non-exclusive

right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibit "A" or Exhibit "B." To the extent reasonably possible, such easements over Units shall be limited to setback areas adjacent to the perimeter boundary of each Unit.

(c) Any damage to a Unit resulting from the exercise of the easements described in this Section 11.2 hereof shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not permit entry into any structure on a Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.3. Easements for Drainage. Declarant hereby reserves a perpetual easement across the entire Community for the purpose of altering drainage and water. This right shall include, but is not limited to, altering swales, installing drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping water flow across any Unit or any property in the Community. Rights exercised pursuant to this 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.

The Declarant and Association, in compliance with any applicable laws and regulations, shall have a blanket easement to pump water from any water bodies within the Community for irrigation purposes. No fences, structures, driveways, plantings, swings, wood piles, dog runs, or any other objects, temporary or permanent, shall be permitted in such areas without the Association's prior written approval, other than those initially installed by Declarant.

11.4. Easements to Serve Additional Property. Declarant, and its duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees hereby reserves an easement over the Common Area for the purposes of enjoyment, use, access, and development of any property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities on or through such property. Declarant agrees that it and its successors or assigns shall not be responsible for any damage caused to the Common Area as a result of the exercise of this easement and such damage shall be repaired by the Person causing such damage at its sole expense.

11.5. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of

ensuring compliance with the Governing Documents. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner; provided, however, the easement granted herein shall not authorize entry onto any single family dwelling located on a Unit without the consent of the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable period of time after requested by the Board.

11.6. Landscaping and Signage Easements. Declarant hereby reserves for itself and the Association perpetual, non-exclusive easements exercisable by their respective employees, agents, and contractors over those portions of the Community designated as "Landscaping and Signage Easements" (or similar label), if any, on the Recorded subdivision Plats relating to the Community for the purpose of installation, maintenance, repair, and replacement of lot bollards, neighborhood entrance monuments, signs, fences, lighting, irrigation systems, and landscaping within the easement area regardless of whether the same are located on Units, Common Area or within a public right-of-way. Nothing herein shall obligate Declarant or the Association to exercise such easements or to construct or install any of the foregoing within any Landscaping and Signage Easement or such similar area identified on the Plat.

11.7. Easement to Inspect and Right to Correct. Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within the Community, including Units, and a perpetual, nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling located on a Unit shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, at such Person's own expense, any damage resulting from such exercise.

11.8. Construction and Sale Easement. Notwithstanding any provisions contained in the Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, Design Guidelines, and any amendments thereto, Declarant reserves for itself and any builder or developer approved by Declarant until Declarant's right unilaterally to subject property to this Declaration terminates and thereafter so long as Declarant or any builder or developer approved by Declarant owns any property in the Community to maintain and carry on development activities, upon such portion of the Community as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole

opinion of Declarant, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near the Community. This easement shall include, without limitation:

- (a) The right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on, or in any portion of the Community as well as any Unit in the Community;
- (b) The right to tie into any portion of the Community with driveways, parking areas and walkways;
- (c) The right to tie into 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;
- (d) The right (but not the obligation) to construct recreational facilities on Common Area;
- (e) The right to carry on sales and promotional activities in the Community;
- (f) The right to place directional and marketing signs on any portion of the Community, including any Unit or Common Area;
- (g) The right to construct and operate business offices, signs, construction trailers, model residences, and sales offices and other activities incidental to the construction, development and sales of Units in the Community; and
- (h) Declarant and any builder or developer with the consent of the Declarant may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer 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, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the Person causing the damage at its sole expense.

11.9 Fence Easement. Declarant hereby reserves for itself an easement across any Unit which borders upon or contains a portion of any water facility, pond, lake, dam, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation, rule, ordinance, or plan approval requirement. In the event that the Association maintains the fence in accordance with Article V hereof, the Association shall have an easement to

maintain such fence, which easement area shall be three feet on either side of said fence as originally constructed.

ARTICLE XII

MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Community.

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

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

ARTICLE XIII

DECLARANT RIGHTS

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and duly Recorded.

Declarant and builders authorized by Declarant may maintain and carry on without fee or charge upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model homes, construction trailers and sales offices. Declarant and authorized builders shall have easements for access to and use of such facilities. Declarant shall have the right and an easement to maintain signs in the Area of Common Responsibility for ten (10) years from the Recording of this Declaration.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation

involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules, architectural standard, or Design Guideline made shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns any property on Exhibit "A" or Exhibit "B".

The rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the By-Laws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant no longer owns any property on Exhibit "A" or Exhibit "B" and the residential dwelling located on each Unit has been issued a certificate of occupancy by the appropriate governmental agency; (b) the date of Recording by Declarant in the real estate records of a written instrument terminating all of Declarant's rights hereunder; or (c) the date that Declarant no longer has the right to unilaterally annex additional property to the Community.

ARTICLE XIV

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

14.1. Agreement to Avoid Litigation. Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (individually "Bound Party" and collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Community, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Section 14.2 ("Claims") shall be resolved using the procedures set forth in Section 14.3.

14.2. Claims. All claims, grievances, or disputes arising out of or relating to the design, construction, or repair of improvements on the Community shall be subject to the provisions of Section 14.3; provided, however, any action by the Association against an Owner to enforce the provisions of this Declaration, which shall include, but not be limited to, any suit by the Association to obtain a temporary restraining order, injunctive relief or any suit to collect past due assessments, shall not be subject to the provisions of Section 14.3.

In addition to the foregoing, any suit between Owners, which does not include Declarant or the Association as a party, and any suit in which any indispensable party is not a Bound Party shall also be exempt from the provisions of Section 14.3.

14.3. Mandatory Dispute Resolution Procedures for Claims. GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED, OR REPAIRED YOUR HOME. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

FOR PURPOSES OF O.C.G.A. § 8-2-35, et seq. THE DEFINITION OF CONSTRUCTION DEFECT AS SET FORTH IN O.C.G.A. § 8-2-35 et seq. SHALL APPLY.

a) Notice. The Association shall, no later than ninety (90) days before initiating an action against Declarant, or any other contractor, provide service of written notice of the claim on the respondent by certified mail or overnight delivery with return receipt. The notice of claim shall state that the Association asserts a construction defect claim or claims and is providing notice of the claim or claims. The notice of claim shall describe the claim or claims in sufficient detail to explain the nature of the alleged construction defects and the results of the defects. In addition, the Association shall provide to the Declarant or contractor any evidence that depicts the nature and cause of the construction defect, including expert reports, photographs, and videotapes, if that evidence would be discoverable under evidentiary rules.

b) Authority to File Suit. An action by the Association against the Declarant or a contractor to recover damages resulting from construction defects in the Area of Common Responsibility may be maintained only after the Association complies with the following:

(i) The Members of the Association have voted to approve commencement of an action by two-thirds (2/3) of the votes cast, by statutory written ballot as provided in O.C.G.A. 14-3-708 or have approved commencement of an action by the affirmative vote of at least two-thirds of the total membership at a meeting of the Members at which a quorum is present;

(ii) The full Board of Directors of the Association and the claimant have met in person and conferred in a good faith attempt to resolve the Association's claim or the claimant has definitively declined or ignored the requests to meet with the Board of Directors of the Association; and,

(iii) If O.C.G.A. § 8-2-35 *et seq.* is in effect, the Association has otherwise satisfied all of the preaction requirements for a claimant to commence an action pursuant to O.C.G.A. § 8-2-35 *et seq.*

c) **Additional Pre-Suit Requirements.** In the event the Association duly calls and notices a meeting for the purpose of obtaining the approval of the Members as provided in Section 14.3(b)(i) above, a copy of the notice shall also be provided to the Declarant at least twenty-one (21) calendar days before the meeting, so long as Declarant owns any property on Exhibit "A" or Exhibit "B".

In addition, at least three (3) business days in advance of the meeting at which the Members vote or at the time a statutory written ballot is circulated to the Members to obtain approval of an action to recover damages resulting from construction defects in the Area of Common Responsibility, the Association shall provide each Owner with a copy of the notice of claim provided to the contractor and an additional written description of claims and the reasons the Board is recommending consideration of the litigation.

d) **Destructive Testing.** The Association or an attorney for the Association shall not employ a person to perform destructive tests to determine any damage or injury to a Unit or the Area of Common Responsibility caused by a construction defect unless:

(i) The person is licensed as a contractor pursuant to law;

(ii) The Association has obtained the prior written approval of each Unit Owner whose Unit will be directly affected by such testing;

(iii) The Association or the person so employed obtains all permits required to conduct such tests and to repair any damage resulting from such tests;

(iv) Reasonable prior notice and an opportunity to observe the tests is given to the Declarant or contractor against whom an action may be brought as a result of the tests; and,

(v) If O.C.G.A. § 8-2-35 *et seq.* is in effect, any additional requirements set forth in O.C.G.A. § 8-2-35 *et seq.*, have been satisfied.

Provided, however, the Board of Directors of the Association may, without giving notice to the Unit Owners, employ a contractor and such other persons as are necessary to make such immediate repairs to the Unit or Area of Common Responsibility as are required to protect the health, safety, and welfare of the Unit Owners.

14.4 Allocation of Costs of Resolving Claims. All costs, including any attorneys' fees, incurred in complying with this Section shall be borne by the party incurring same. Any and all subsequent costs, including any attorneys' fees, shall be made in accordance with the Right to Repair Act as set forth in O.C.G.A. § 8-2-35 *et seq.*, if the Right to Repair Act is in effect.

14.5 Enforcement of Resolution. After resolution of any claim, if any party fails to abide by the terms of any agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article 14. In such event, the party taking action to enforce the agreement shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

ARTICLE XV

GENERAL PROVISIONS

15.1. Duration. Subject to the limitations of Georgia law, this Declaration shall have perpetual duration. If Georgia law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall remain in effect for the maximum period permitted and shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. In the event a written instrument signed by the then Owners of at least two-thirds (2/3) of the Units has been Recorded within the year immediately preceding the beginning of a twenty (20) year renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, the Declaration shall be modified or terminated to the extent specified therein.

15.2. Amendment. This Declaration may be amended as provided in this Section. Amendments to this Declaration shall become effective upon Recordation, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. The

amendments authorized by this Section may be of uniform or non-uniform application and Owners shall be deemed to have agreed that the Declaration may be amended as provided herein and that any rule of law requiring unanimous approval of amendments having a non-uniform application shall not apply.

(a) By Declarant. So long as Declarant owns any property subject to, or which may be subjected to, this Declaration, it may amend this Declaration if such amendment is: (i) required to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) required to enable any title insurance company to issue title insurance coverage; (iii) required by an institutional or governmental lender or purchaser of mortgage loans; or (iv) necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans; provided, any such amendment shall not adversely affect the title to any Owner's Unit unless any such Unit Owner consents in writing. Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, such amendment shall not materially adversely affect the substantive rights of any Owners hereunder, nor shall it adversely affect title to any Unit without the consent of the Owner of such Unit.

(b) By the Owners. This Declaration may be amended upon the affirmative vote, written consent, or any combination thereof, of the Members representing at least two-thirds (2/3) of the total eligible votes in the Association and the consent of Declarant until its rights have terminated as provided in Article XIII hereof.

The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Members to any amendment shall be evidenced by the execution of the amendment by said Members, or, in the alternative, the sworn statement of the President, Vice President or Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Members was lawfully obtained and that any notices required by the Declaration, By-Laws, Articles of Incorporation or Georgia law were given.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignees of such right or privilege.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

15.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

15.4. Litigation. No judicial, administrative, or arbitration proceeding for any claim, grievance, or dispute arising out of, resulting from or relating to anything other than the design, construction or repair of improvements on the Community, shall be commenced or prosecuted by the Association unless approved in writing by seventy-five percent (75%) of the total Association vote taken at a meeting duly called pursuant to the By-Laws for such purpose. This Section shall not apply, however, to: (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to *ad valorem* taxation; (d) counter-claims brought by the Association in proceedings instituted against it; (e) claims set forth in Section 14.2; or (f) actions brought by the Association against any contractor, vendor or supplier of goods or services arising out of a contract for goods or services to which the Association is a party. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

15.5. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same. In the event of a conflict between this Declaration and the provisions set forth in any Supplemental Declaration, the more restrictive provision shall control.

15.6. Compliance. Every Owner and occupant of any Unit shall comply with the Governing Documents and the failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

15.7. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board or its designee at least seven (7) days' prior written notice of the name and address of the purchaser or

transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.8. Exhibits. Exhibit "A" and Exhibit "B" attached to this Declaration are incorporated by this reference and the amendment of such exhibits shall be governed by the provisions of Section 15.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

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

15.10. Notices. Except as otherwise provided herein or therein, notices provided for in this Declaration or the Articles or By-Laws shall be in writing, and shall be addressed to an Owner at the address of the Unit and to the Declarant or the Association at the address of their respective registered agent on file with the Secretary of State of the State of Georgia. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association of such different address. Owners shall keep the Association advised of their current address and phone numbers where they can be reached. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by Federal Express or other reputable courier service. The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or the date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 1st day of June, 2013.

DECLARANT: D.R. Horton, Inc., a Delaware corporation

By: *Thomas F. Hill, Jr.*
Thomas F. Hill, Jr.
Its: *Division President, Atlanta*
Division President, Atlanta
Attest: *Bruce A. Rippen*
Bruce A. Rippen
Its: *Assistant Secretary*
Assistant Secretary

Signed, sealed, and delivered
in the presence of:

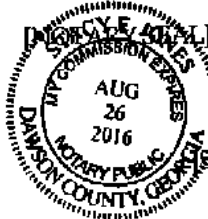
[CORPORATE SEAL]



Donna S. Williams
WITNESS

Gregory E. Jurek
NOTARY PUBLIC

My Commission Expires: 8/26/2016



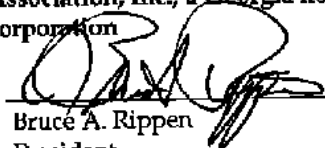
SIGNATURES CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned Association has executed this Declaration this 1st day of June, 2013.

ASSOCIATION:

Heatherbrooke Property Owners
Association, Inc., a Georgia non-profit
corporation


By:


Bruce A. Rippen
President

Its:

[CORPORATE SEAL]

Signed, sealed, and delivered
in the presence of:


WITNESS


NOTARY PUBLIC

My Commission Expires: 9/20/2015

[NOTARY SEAL]



KIMBERLY M. LUCAS
NOTARY PUBLIC
HALL COUNTY, GEORGIA
COMMISSION EXPIRES 9-20-2015

EXHIBIT "A"

Land Initially Submitted

All that tract or parcel of land lying and being in Land Lots 193 and 194 of the 20th District, 2nd Section of Cobb County, Georgia, as shown on that Final Plat for Heatherbrooke Subdivision, prepared by Gaskins, dated September 7, 2006, containing the seals of Donaloy Hutchins, G. R. L. S. No. 2011 and Christopher A. Evans, G. R. L. S. No. 2784, recorded in Plat Book 253, pages 58 through 61, Cobb County, Georgia records, reference to said plat and the record thereof being hereby made for a more complete description.

EXHIBIT "B"

Land Subject to Annexation

The following property is not subject to this Declaration, but may be annexed in accordance with the terms of the Declaration. Any parcel or tract of land which is:

1. Adjacent to the property described on Exhibit "A" or adjacent to property previously annexed to the Declaration.
2. Located within a one (1) mile radius of the property described in Exhibit "A".

Exhibit "C"
Initial Use Restrictions and Rules

The purpose of the initial Use Restrictions and Rules is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities that fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Article IX (Declarant, and the Board, as appropriate) have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Unit under one set of circumstances, the same thing may be disapproved for another Unit under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Declarant or the Board from taking enforcement action in any appropriate circumstances.

The following shall apply to all of the Community until such time as they are modified pursuant to Article X of the Declaration.

1. General. The Community shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any sales professionals retained by Declarant to assist in the marketing or sale of property described on Exhibit "A" or Exhibit "B," offices for any property manager retained by the Association or business offices for Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.

2. Rules and Restrictions. The Community is subject to the following rules and restrictions unless expressly authorized by, and then subject to such conditions as may be imposed by the Board of Directors:

(a) Parking. The following restrictions shall apply to all Owners, occupants, invitees and guests; provided, however, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service to or to make a delivery within a Unit or the Common Area;

(i) Vehicles shall be parked only in appropriate parking spaces serving the Unit or other designated parking areas established by the Board, if any. No on street parking shall be permitted except in connection with special events as approved by the Board or as otherwise approved by the Board in writing. All parking shall be subject to such additional reasonable rules and regulations as the Board may adopt. The term "vehicles," as used herein, shall include, without limitation, trailers,

motorcycles, minibikes, trucks, campers, buses, vans and automobiles. The term "parking areas serving the Unit" shall refer to the number of garage parking spaces serving a residential dwelling located on a Unit and if and only if the Owner or occupants of a Unit have more vehicles than the number of garage parking spaces, those excess vehicles which are an Owners or occupant's primary means of transportation on a regular basis may be parked on the driveway on the Unit; provided, however, no vehicle parked in the driveway of a Unit shall encroach onto the sidewalks in the Community. The guest parking spots within the Community, if any, are for guests only and vehicles belonging to Unit Owners or occupants may not be parked in said guest parking spaces;

(ii) Parking of commercial vehicles or equipment, tractor trailer cabs, commercial equipment, mobile homes, recreational vehicles, ATVs, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than in enclosed garages or other areas designated by the Board, if any, is prohibited; provided, however, small panel trucks with company names and/or logos on the sides that are used as primary vehicles shall be permitted;

(iii) Any vehicle, commercial vehicle, boat, motorhome, trailer, ATV, boat and other watercraft or recreational vehicle, left upon any portion of the Common Area for longer than forty-eight (48) consecutive hours is subject to removal without further notice (the temporary removal of the vehicle, commercial vehicle, boat, motorhome, trailer, ATV, boat and other watercraft or recreational vehicle to break the continuity of the forty-eight (48) hour period shall not be sufficient to establish compliance with this restriction). The costs of such removal shall be an assessment against the Unit of the Owner of such vehicle, commercial vehicle, boat, motorhome, trailer, ATV, boat and other watercraft or other vehicles;

(iv) Garage doors shall be kept closed except during times of ingress and egress from the garage and garages shall be used primarily for the parking of vehicles and not for storage or other purposes;

(v) Trucks with mounted campers which are an Owner or occupants' primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal; and

(vi) Nothing herein shall prevent the Declarant and its respective agents, builders, subcontractors and assigns from parking vehicles on any and all streets during regular business hours to facilitate the construction, development and build-out of the Community.

(b) Animals. Other than a reasonable number of dogs, cats, or other usual and common household pets, as determined by the Board in its sole discretion, raising, breeding, or keeping of animals of any kind is prohibited. Pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may institute legal action to have the pet removed and all costs associated therewith shall be a Specific Assessment against the Unit. Dogs shall be kept on a leash whenever outside the dwelling located on a Unit and not in a fenced in yard. Pet owners are required to clean up after pets. Pets shall be registered, licensed, and inoculated as required by law. Failure to comply with these restrictions may result in fines as provided for in the By-Laws. No dog runs, runners or exterior pens for household pets shall be erected or maintained on any Unit unless approved in accordance with the provisions of Article IX hereof. The Board of Directors shall have the right to adopt additional rules and regulations designed to minimize damage and disturbance to other Owners and occupants including restrictions requiring damage deposits, waste removal, leash control, noise control and occupancy limits based on the size and facilities of the Unit.

(c) Business. An Owner or occupant residing in a Unit may conduct business activities within the residential dwelling located on the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Community; (iii) the business activity does not involve excessive visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Community; (iv) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board; or (v) does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. This subsection shall not apply to any activity conducted by Declarant or a builder approved by Declarant with respect to Declarant's development and sale of the Community or Declarant's use of any Units which it owns within the Community.

(d) Trash Cans. Trash cans and recycle bins shall not be stored in the driveway other than the day of trash collection. Trash and recycling receptacles stored in side yards must be screened from view. Such screening design and materials must be approved by the Reviewer as provided in Article IX hereof. The Board of Directors shall have the authority to adopt rules and regulations governing trash removal and/or recycling in the Community.

(e) Gardening Materials. Garden hoses, hose reels, sprinklers, and other gardening material and equipment must be stored out of view from adjacent Units and the public right-of-way when not in use.

(f) Garages. Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area is not permitted without the prior approval of the Reviewer pursuant to Article IX.

(g) Satellite Dishes. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting audio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Unit, unless approved in accordance with the provisions of Article IX hereof; provided, however, no such approval shall be necessary to install: (a) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services or to receive or transmit fixed wireless signals via satellite, that are one meter or less in diameter; (b) antennas designed to receive video programming services via multi-point distribution services or to receive or transmit fixed wireless signals other than via satellite that are one meter or less in diameter or diagonal measurement; or (c) antennas that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the dwelling located on the Unit unless such installation (i) imposes unreasonable delay or prevents the use of the antennae; (ii) unreasonably increases the cost of installation; or (iii) an acceptable quality signal cannot otherwise be obtained.

(h) Fences. Written approval must be obtained from the Reviewer prior to any placement, erection, or installation of any fence or fencing type barrier of any kind on a Unit. Under no circumstances shall any fence be placed, erected, allowed, or maintained upon any Unit closer to the street than the rear one-third of the residence located on the Unit. Additional restrictions may apply to corner lots. Fence types are determined by the Declarant for the Community-Wide Standard and may be set forth in the Design Guidelines, but other types may be approved on an individual basis. The Declarant may install fencing on certain Units within the Community. Notwithstanding the foregoing, Declarant shall have the right to erect fencing of any type, at any location, on any Unit during the period that such Unit is being used by Declarant as a model home. The Board of Directors shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Area.

(i) Miscellaneous. Written approval must be obtained from the Reviewer prior to any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of the Unit in accordance with the provisions of Article IX of the Declaration. This shall include, without limitation, signs, permanent

basketball hoops, swing sets and similar sports and play equipment; hedges, walls, dog runs, or animal pens, of any kind; garbage cans; woodpiles; and swimming pools.

(j) Portable Play Equipment. Equipment, including portable basketball hoops, soccer goals, pitching/catching devices, children's toys, bicycles, tricycles and other such items, must be stored out of view from adjacent Units and the public right-of-way when not in use.

(k) Flags. No approval under Article IX of this Declaration shall be required for any Owner or occupant to display the flag of the United States of America and the current flag of the State of Georgia on a Unit in accordance with the provisions of the U.S. Flag Code (36 US Code 10) and usual and customary practice. The Board of Directors of the Association may promulgate reasonable rules and regulations with respect to the display of flags in the Community, including, without limitation, regulating the size of flags that may be displayed and imposing reasonable time, place and manner restrictions pertaining to the display of the United States flag located on a Unit in the Community; provided, however, no such rule enacted by the Declarant or the Association shall have the effect of prohibiting any Owner from displaying the flag of the United States of America on any Unit in the Community in contravention of the Freedom to Display the American Flag Act of 2005.

(l) Storm Water Detention/Retention Ponds. Except as herein provided, storm water retention or detention ponds within the Community shall be used for aesthetic amenities and storm water drainage only, no other use thereof, including, without limitation, swimming, ice skating, playing, or use of personal flotation devices, and other recreation, shall be permitted, without the written consent of the Board of Directors. The Association and the Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the storm water detention/retention ponds within the Community. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any storm water retention ponds within the Community. Applicable governmental agencies, the Declarant and the Association, shall have the sole right to control the water level of all bodies of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any storm water retention ponds. Owners shall not be permitted to withdraw water from any storm water detention/retention pond without the prior written consent of the Board of Directors.

3. Prohibited Conditions. The following shall be prohibited within the Community:

(a) Quiet Enjoyment. Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or

threaten the safety of the occupants of other Units; Plants, animals, devices, or other things 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 (the inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board); use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes; Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit. Each Owner hereby agrees that Declarant and its employees and subcontractors may engage in construction activities in the Community and that such activities shall not be in violation of this subsection.

(b) Laws. Any activity which violates local, state, or federal laws or regulations is prohibited. However, the Board shall have no obligation to take enforcement action in the event of a violation;

(c) Disrepair. Structures, equipment, or other items on the exterior portions of a Unit which have become unsightly, rusty, dilapidated, or otherwise fallen into disrepair;

(d) Irrigation. Sprinkler or irrigation systems or wells of any type which draw upon water from creeks, streams, or other ground or surface waters within the Community, except that Declarant and the Association shall have the right to draw water from such sources;

(e) Motorized vehicles. Motorized vehicles on pathways or unpaved Common Areas, except for public safety vehicles and vehicles authorized by the Board;

(f) Annoyance. Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units; provided, however, construction activities on Units in the Community by the Declarant or its agents or employees shall be deemed an annoyance as provided herein;

(g) Burning. Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Dumping. Dumping of grass clippings, leaves, or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, storm water detention/retention pond, lake, or elsewhere

within the Community is prohibited. Fertilizers and pre-emergents may be applied to landscaping provided care is taken to minimize runoff;

(i) Trash. Accumulation of rubbish, trash, or garbage is prohibited except between regular garbage pick ups, and then only in approved containers;

(j) Drainage. Obstruction or rechanneling of drainage flows after the installation of drainage swales, storm sewers, or storm drains is prohibited, except that Declarant and the Association shall have such right;

(k) Subdivision. Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and Recorded, except that Declarant shall be permitted to subdivide or re-plat Units which it owns;

(l) Common Area Landscaping. Removal, alteration or pruning of landscaping on the Common Area;

(m) Firearms and Fireworks. The display and discharge of firearms and fireworks; provided, however, that the display of lawful firearms is permitted by law enforcement officers and also is permitted for the limited purpose of transporting firearms to or from a Unit; and provided, further the Board shall have no obligation to take action to prevent the discharge of firearms. The term "firearms" includes "B-B" guns, pellet guns, archery equipment and firearms of all types, regardless of size. The term "fireworks" shall include, but not be limited to, those items as listed in O.C.G.A. Section 25-10-1, as amended;

(n) Fuel. On site storage of fuel, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for the operation of maintenance vehicles, generators, and similar equipment;

(o) Vegetation. Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within or outside the Community, or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(p) Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose. The side of all window treatments, with the exception of stained wood blinds or shutters, which can be seen at any time from the outside of any structure located on a Unit shall be white, off-white or such other color as may be permitted in the Design Guidelines. Bed sheets,

blankets, towels, black plastic, paper and similar type items shall not be used as window treatments; and

(q) Air Conditioning Units. Installation and use of window air conditioning units shall be prohibited.

EXHIBIT "D"

**BY-LAWS
OF
HEATHERBROOKE PROPERTY OWNERS ASSOCIATION, INC.**

BY-LAWS
OF
HEATHERBROOKE PROPERTY OWNERS ASSOCIATION, INC.
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