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Jay C. Stephenson

[SPACE ABOVE RESERVED FOR RECORDING DATA]

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Clerk of Superior Court Cobb Cty. Ga.

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Attention: Mindy C. Waitsman

STATE OF GEORGIA
COUNTY OF COBB

Reference: Deed Book: 4568
Page: 494

Amended and Restated Declaration of Covenants, Conditions and Restrictions for Arden Trace

IMPORTANT NOTICE:

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

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

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PREPARED BY:

**WEISSMAN, NOWACK,
CURRY & WILCO, P.C.**
ATTORNEYS AT LAW

Mindy C. Waitsman, Esquire

**Amended and Restated Declaration of
Covenants, Conditions and Restrictions for Arden Trace**

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WHEREAS, a Declaration of Covenants, Restrictions and Easements was recorded on July 21, 1987, in Deed Book 4568, Page 494, *et seq.*, Cobb County, Georgia land records (hereinafter referred to as the "Original Declaration") as may be amended; and

WHEREAS, Article X, Section 7 of the Original Declaration provides that the Original Declaration may be amended by an agreement signed by 75% of the Owners of Lots; and

WHEREAS, members of the Association holding at least seventy-five (75%) percent of the Owners of Lots have signed an agreement to amend the Original Declaration and have approved this Amendment and the Association desires to amend the Original Declaration; and

WHEREAS, in accordance with Article VI, Section 6.07 of the Bylaws of Arden Trace Homeowners Association, Inc. ("Original By-Laws"), the Original By-Laws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of two-thirds of the total association vote thereof; and

WHEREAS, members of the Association holding two-thirds percent of the total vote thereof desire to amend the Original By-Laws; and

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

1. **NAME.**

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

2. **DEFINITIONS.**

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

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

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

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

D. **Association** means Arden Trace Homeowners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

E. **Association Legal Instruments** means this Declaration and all exhibits hereto, including the Association's Bylaws and the plats, all as may be supplemented or amended.

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

G. **Bylaws** means the Bylaws of Arden Trace Homeowners Association, Inc., attached to this Declaration as Exhibit "B" and incorporated herein by this reference.

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

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

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

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

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

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

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

O. **Eligible Mortgage Holder** means a holder of a first Mortgage secured by a Lot who has submitted a request in writing to the Association to be deemed an Eligible Mortgage Holder. Such notice must include the mortgage holder's name and address and the Lot number or address of the property in the Community secured by such mortgage.

P. **Lot** means a portion of the Community intended for ownership and use as a single-family dwelling site subject to this Declaration, as shown may be on the Plats for the Community recorded in the Cobb County, Georgia land records.

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

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

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

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

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

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

W. **Plats** means those plats of the survey relating to the Community filed in Plat Book 119, Page 92; Plat Book 122, Page 6; Plat Book 120, Page 21; and Plat Book 131, Page 16, Plat Book 131, Page 79 of the Cobb County, Georgia land records. All of the Plats of survey are incorporated herein by this reference.

3. SUBMITTED PROPERTY AND ADDITIONAL PROPERTY.

A. Submitted Property. The real property in the Community subject to this Declaration and the Act is located in Land Lot 148 and 213, of the 16th District of Cobb County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, and incorporated herein by this reference and as may be shown on the Plats.

B. Additional Property. Any property shown on any Plat, which property has not been submitted to the Declaration, may be submitted to the Declaration by recording a consent form executed by the owner of such property and by the Board of Directors. Other property not shown on any Plat may be submitted to this Declaration with the approval of Owners holding at least a majority of the eligible vote of the total Association membership and by recording a consent form executed by the owner of such property and by the Board of Directors.

4. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

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

B. Voting. The Owner(s) of the Lot shall be entitled to one equally weighted vote for such Lot, which vote may be exercised and suspended as provided in this Declaration and the Bylaws.

5. ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

A. General Allocations. Except as provided below, or elsewhere in the Act or the Association Legal Instruments, the amount of all Common Expenses shall be assessed against all the Lots equally.

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

6. ASSESSMENTS.

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

B. Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments and other charges levied pursuant to this Declaration and the Bylaws.

All assessments and charges levied against a Lot and its Owner, together with interest, costs and reasonable attorneys' fees actually incurred (including post-judgment attorneys' fees, costs and expenses), and rents (if the Board of Directors so elects), in the maximum amounts permitted under the Act, shall be: (1)

a charge and a continuing lien against such Lot; and (2) the personal obligation of the Person who is the Owner of the Lot on the due date of the assessment. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance of the Lot. The Association, in the Board's discretion, may record a notice of such lien in the Cobb County, Georgia land records evidencing the lien created under the Act and this Declaration. The lien provided for herein shall have priority as provided in the Act.

Assessments shall be paid in such manner and on such dates as determined by the Board of Directors. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever.

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

If any assessment or charge, or any part or installment thereof, is not paid in full within 10 days of the due date, or such later date as may be provided by the Board of Directors:

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

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

(iii) the Board of Directors may accelerate and declare immediately due any unpaid installments of that Owner's assessments and charges. Upon acceleration, the Owner shall lose the privilege of paying such assessments and charges in installments, unless the Board otherwise reinstates such privilege.

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

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

D. Computation of Operating Budget and Assessment. To establish the annual assessment for a fiscal year, the Board of Directors shall prepare a budget covering the estimated costs of operating the Community, which may include a reserve contribution as provided below. The Board shall provide the budget to the Owners at least 21 days before the due date of such assessment, or the first installment thereof. The budget and the assessment shall become effective unless, before the due date of such assessment, a majority of the total Association membership votes to disapprove them at a duly called membership meeting.

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

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

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

E. Special Assessments. In addition to the all other assessments and charges provided for herein, the Board of Directors may levy a special assessment against all Owners for any purpose. Special assessments totaling more than \$500.00 per Lot in any fiscal year must first be approved by at least a majority of those Owners either voting by written consent or ballot pursuant to the Bylaws, or at least a majority of those Owners present or represented by proxy at a duly called meeting of the members, notice of which shall specify the purpose of such meeting.

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

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

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

7. MAINTENANCE RESPONSIBILITY.

A. Owner's Responsibility. Each Owner of a Lot, whether vacant or occupied shall maintain and keep his or her Lot and dwelling in a neat, attractive and safe condition and in good repair, condition and order. This maintenance obligation shall include, but not be limited to, roofs, gutters, downspouts, exterior building surfaces, foundations and foundation walls, windows, doors, trees, shrubs, grass, walks, walls and other improvements on the Owner's Lot. In addition, each Owner shall maintain any public right-of-way located between the Owner's Lot and the curb of the street(s) bordering such Lot. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto. Each Owner shall perform his or her responsibility hereunder in such manner so as not to unreasonably disturb other Lot Owners.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Property by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Property) shall be performed at the sole expense of

such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

B. Association's Responsibility. The Association shall maintain, keep in good repair, replace and, in the Board of Directors' discretion, improve or alter the Common Property. This maintenance obligation shall include amenities, paved access and parking areas, greenbelts, trees, shrubs, grass, walks, drives and other improvements located on the Common Property. The Association shall also maintain and keep in good repair such utility lines, pipes wires, conducts and system's all water and sewer pipes or facilities which serve the Common Property, to the extent that such pipes and facilities are not maintained by public, private, or municipal utility companies.

The Association shall have the right, but not the obligation, to maintain public rights of way adjacent to the Community and other property not owned by the Association if the Board of Directors determines that such maintenance would benefit the Community.

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

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

If the Board of Directors determines that the need for maintenance or repair on the Common Property is caused through the willful or negligent act of any Owner or Occupant or his or her family, guests, tenants, or invitees, then the Association may charge the cost of any such maintenance, repair, or replacement as a specific special assessment against the Owner's or Occupant's Lot and the Owner thereof.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, unless such injury or damage results directly and solely from the negligence or gross negligence of the Association. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Paragraph where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

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

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

D. Maintenance Standards and Interpretation. The Board of Directors has the authority to establish, interpret and enforce maintenance standards for the Community. These standards may vary over time, however, the variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Paragraph. No Board decision or interpretation regarding maintenance standards shall constitute a binding precedent with respect to subsequent Board decisions or interpretations.

8. ARCHITECTURAL CONTROLS.

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

B. Limitation on Exterior Modifications. Except as otherwise provided herein, no Owner, Occupant, or any other person may, without written approval of the Board or ACC:

- (i) construct any dwelling or other improvement on a Lot;
- (ii) make any change or alteration that affects the exterior appearance of the Lot;
- (iii) erect, place or post any object or thing on the Lot that affects the exterior appearance of the Lot; or

(iv) erect, place or post any object, sign, clothesline, playground equipment (including, but not limited, to trampolines, swing sets and all basketball goals), light, storm door or window, artificial vegetation, exterior sculpture, fountains, flags (other than the American flag) or other thing on the exterior of the Lot, on the dwelling on the Lot, in any windows of the dwelling (other than appropriate window treatments permitted under Paragraph 9 hereof), or on any Common Property. One well maintained, reasonably sized American flag may be hung and flown in compliance within the Federal Flag code without ACC approval. The ACC may determine the dimensions of the flag and the flag pole to determine whether the size of the American flag is reasonable. Holiday decorations may be placed in a Lot beginning 30 days prior to the holiday and must be removed no later than 30 days after the holiday.

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

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

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

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

The standard for approval of such modifications shall include, but not be limited to: (1) aesthetic consideration; (2) materials to be used; (3) compliance with the Community-Wide Standards, or this Declaration; (4) harmony with the external design of the existing dwellings, Lots and structures, and the location in relation to surrounding structures and topography; and (5) any other matter deemed to be relevant or appropriate by the Board or ACC. The Board or ACC shall approve any request that it determines, in its reasonable discretion, to be in substantial compliance with such standard for approval.

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

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

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

H. Professional Consultants and Fees. The Board of Directors shall be authorized to charge, as a specific special assessment, against any Owner and Lot: (1) a reasonable administrative fee for review of modifications on, or submitted plans for, such Lot; and (2) reasonable fees for any architect, engineer or other professional consultant engaged by the Board to assist with review of modifications on, or submitted plans for, such Lot.

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

9. USE RESTRICTIONS.

Each Owner shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of the Association Legal Instruments. In addition to the following use restrictions, the Board of Directors may adopt rules and regulations in accordance with the terms hereof and as specified in the Bylaws.

A. Residential Use. Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any portion of the Community, except that the Owner or Occupant residing in a dwelling on a Lot may conduct ancillary business activities within the dwelling so long as:

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

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

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

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

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

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

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

The term "business," as used in this provision, shall include, without limitation, any occupation, work or activity that involves the provision of goods or services to persons other than the provider's family for a

fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor.

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

If an Owner is a corporation, limited liability company, partnership, trust or other legal entity not being a natural person, the Owner shall designate in writing to the Board the name(s) of the person(s) who will occupy the dwelling on the Lot. The designated person(s) to occupy the dwelling may not be changed more frequently than once every 12 months without the Board's written consent.

C. Subdivision of Lots. No Lot may be subdivided into a smaller Lot without the prior written approval of the Board of Directors.

D. Use of Common Property. There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on or removed from any part of the Common Property without the express written consent of the Board of Directors. The Association may remove and either discard or store any unauthorized personal property left or kept on the Common Property and the Association shall have no obligation to return, replace or reimburse the owner for such property. The Association is not liable to any Person for any loss of, theft of, or damage to any personal property.

The Board may allow an Owner or Occupant to temporarily reserve portions of the Common Property. Such Owner or Occupant, on behalf of himself or herself and his or her guests and family, assumes all risks associated with such use of the Common Property and all liability for any damage or injury to any person or property as a result of such use. The Association shall not be liable for any damage or injury resulting from such use.

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

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

(i) Any screaming, shouting, excessively loud talking, whistling, or playing of music or television either outside of a Lot at any time or within a Lot if such conduct can be heard in the normal course of activities in any other Lot(s);

- (ii) Any fighting, raucous behavior or insobriety either outside of a Lot at any time or within a Lot if such conduct can be heard in the normal course of activities in any other Lot(s);
- (iii) The use of any alarm, equipment, or devise, mechanical or otherwise, which creates or produces excessively loud sounds or any vibrations either outside of a Lot at any time or within a Lot if such sounds can be heard or vibrations felt in the normal course of activities in any other Lot(s);
- (iv) Any threatening or intimidating conduct towards any resident, guest or pet at the Property;
- (v) Any conduct which, in the Board's reasonable discretion, creates any danger or risk of injury to others or damage to property at the Property or which creates any threat to health or safety of any other resident or pet;
- (vi) Any excessively loud play or playground activities either outside of a Lot at any time or within a Lot if such conduct can be heard in the normal course of activities in any other Lot (s);
- (vii) Any conduct which creates any noxious or offensive odor either outside of a Lot at any time or within a Lot if such odors can be detected in the normal course of activities in any other Lot (s);
- (viii) Any similar action or activity outside of a Lot on the Property, or which occurs inside a Lot but which interferes with the peaceful use and enjoyment of other Lots or the Common Area by any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot; or
- (ix) Any construction or similar activities in a Lot which can be heard in other Lots between the hours of 9:00 p.m. and 7:30 a.m.

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

No Lot Owner or Occupant may use or allow the use of the Lot or the Common Areas in any manner which creates noises between the hours of 11:00 p.m. and 7:30 a.m. which can be heard by persons in another Lot that will, in the Board's sole discretion, unreasonably interfere with the rights, comfort or convenience of any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot.

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

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

F. Firearms. The display or discharge of firearms on the Common Property is prohibited, except: (1) by law enforcement officers; and (2) to transport lawful firearms across the Common Property to or from a Lot. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types.

G. Pets. No Owner or Occupant may keep any animals other than a reasonable number of generally recognized household pets in the Community, as determined in the sole discretion of the Board of Directors. No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose in the Community. Pit Bulls, Rotweillers, any mix-breed dogs that contain Pit Bull or Rotweiller and any pets who, in the opinion of the Board, display aggressive behavior are not permitted anywhere in the Arden Trace community. Pets may not be left unattended outdoors. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors in areas which are not fully enclosed by a fence. Feces left by pets on the Common Property or on any Lot must be removed promptly by the owner of the pet or the person responsible for the pet.

No potbellied pigs are permitted in the Community. No animals that the Board determines to be dangerous may be brought onto or kept in the Community. If the Board determines that an Owner's or Occupant's pet endangers any person or other pet or creates a nuisance or unreasonable disturbance in the Community, the Board may require that the pet be permanently removed from the Community upon seven days' written notice to such Owner or Occupant. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet and/or obtain a court order requiring the Owner or Occupant to do so. Notwithstanding the above, the Board may remove any pet without prior notice to the pet's owner if, in the Board's sole discretion, the pet presents an immediate danger to health, safety or property in the Community.

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

H. Parking. No Owner or Occupant may keep or bring into the Community more than a reasonable number of vehicles per Lot, as determined in the sole discretion of the Board of Directors. Vehicles only may be parked in garages, driveways on Lots, designated parking spaces, or other areas authorized in writing by the Board. Vehicles may not be parked on any grass or landscaped areas on Lots.

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

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

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

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

I. Signs. Except as may be provided for herein or as may be required by legal proceedings or any governmental construction permitting process, no signs, advertising posters, political placards or billboards of any kind shall be erected, placed, or permitted to remain in the Community without the prior written consent of the Board of Directors or ACC, other than: (1) two professional security signs not to exceed six inches by six inches each in size displayed on a Lot; (2) one professionally lettered "For Sale" sign not to exceed 24" by 30" in size displayed on a Lot being offered for sale; and (3) three professionally lettered political candidate endorsement placards not to exceed 24" by 30" in size displayed on a Lot from 30 days before an election to five days after such election. The Board may adopt rules permitting temporary signs on Lots announcing open houses, births, birthdays or other events for limited periods of time. The Board shall have the right to erect signs on the Common Property.

J. Rubbish and Trash. Owners and Occupants shall regularly remove all rubbish and trash from the Lot. No rubbish or trash shall be placed on the Common Property, except as provided herein. Rubbish and trash shall be disposed of in appropriate sealed bags and placed in proper receptacles for collection. The Board may establish additional rules regarding placement of trash cans for pick-up and/or storage, including requiring trash removal in the Community from a single vendor and establishing schedules for trash can placement and trash pickup. Containers for trash must be stored in a place not visible from the public right-of-way.

K. Unightly or Unkempt Conditions. Owners and Occupants are prohibited from engaging in activities which cause disorderly, unsightly or unkempt conditions on the Common Property or outside of a dwelling in the Community, such as the assembly and disassembly of motor vehicles and other mechanical devices. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling. Only appropriate outdoor items, such as neatly stacked firewood, potted plants, patio furniture and grills may be kept outside the dwelling on any Lot. Owners and Occupants shall maintain such items in a neat and attractive condition, as determined in the Board's sole discretion.

L. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. Each Owner and Occupant shall ensure that any drainage grating and/or headwalls on the Owner's Lot are clear of obstruction and debris. Furthermore, no Owner or Occupant may obstruct or rechannel the drainage flows across the Owner's Lot.

M. Erosion Control; Contamination. No Owner or Occupant shall engage in any activity which creates erosion or siltation problems or causes contamination of or damage to any stream, water course or any other Lot in the Community. Each Owner and Occupant shall be liable for all damages and restoration costs resulting from such unauthorized activity.

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

O. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub, tree or other landscaping shall be placed or permitted to remain where it would create a traffic or sight problem.

P. Mailboxes. Only one mailbox may be located on each Lot. The Owner shall replace or restore any destroyed or damaged mailbox on the Lot. The Board may establish mailbox standards and require reasonable modifications or upgrades to mailboxes and mailbox posts to meet revised Community Standards.

Q. Yard Sales. No yard sale, garage sale, flea market or similar activity shall be conducted in the Community without the prior written consent of the Board of Directors and subject to all reasonable conditions that the Board may impose. However, Owners and Occupants may conduct estate sales or similar sales entirely within their dwellings not more than once in any 12 month period.

R. Garages. All garages must have doors. Garage doors must be coordinated with the dwelling. If garage space is available, Owners and Occupants should park their cars and other motor vehicles in the garage before parking in the driveway. Garage doors also should remain closed when not in use for ingress, egress or garage use, or when the Owner or Occupant is not outside on the Lot. Garage conversions are prohibited; provided, however, that all garage conversions in existence on the Effective Date, and made in compliance with all of the terms of the Original Declaration, shall not constitute a violation of this requirement. The Board may adopt additional rules regarding garages.

S. Window Treatments. Unless otherwise approved in writing by the Board of Directors, all windows on a dwelling on a Lot which are exposed to a street or another dwelling shall have customary and appropriate window treatments. The Board may establish additional rules regarding window treatments, such as requirements for the location, type and exterior color of window treatments.

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

10. LEASING AND OCCUPANCY.

To preserve the character of the Community as predominantly owner-occupied, the Leasing of Lots is prohibited, except by the Association and as may be provided herein. "Leasing" means the regular, exclusive occupancy of a Lot by any person(s) other than: (1) the Owner or a parent, child or spouse of an Owner

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

A. Permitted Leasing. Leasing of Lots is allowed only by: (1) a Grandfathered Owner; or (2) a non-Grandfathered Owner who has received a Hardship Permit as provided below. Hardship Permits shall be valid only as to a specific Owner and Lot and shall not be transferable between either Lots or Owners (including a subsequent Owner of a Lot where such permit was issued to the Owner's predecessor-in-title).

(i) **Hardship Permits.** If the inability to lease will result in an undue hardship to the Owner, then the Owner may seek to lease on a hardship basis, for a term not to exceed one year, by applying to the Board of Directors for a Hardship Permit. The Board may approve or deny an Owner's request for a Hardship Permit in its discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship; (2) the harm, if any, which will result to the Community if such permit is issued; (3) the number of outstanding Hardship Permits; (4) the Owner's ability to cure the hardship; and (5) whether previous Hardship Permits have been issued to such Owner; provided, however, a Hardship Permit shall not be issued to any Owner if the Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge or if the Owner is in violation of the Association Legal Instruments or rules.

A "hardship" as described herein shall include, but not be limited to, the following situations: (1) when the Board determines that an Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six months from the date that the Lot was placed on the market, sell the Lot, except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) when the Board determines that an Owner must temporarily relocate out of the metropolitan-Atlanta area for employment purposes and intends to return to reside in the Lot within one year; or (3) an Owner dies and the Lot is being administered by his or her estate.

Unless otherwise determined by the Board, a Hardship Permit authorizes an Owner to lease the Lot once for a term not to exceed one year.

(ii) **Expiration and Revocation of Permits.** Hardship Permits are automatically revoked upon: (1) the sale or transfer of the Lot to a third party (excluding sales or transfers to an Owner's spouse); (2) the failure of an Owner to lease his or her Lot for 60 consecutive days at any time after the issuance of such permit; or (3) the occupancy of the Lot by the Owner. An Owner may apply for an additional Hardship Permit at the expiration or revocation of a previous one.

B. General Leasing Provisions.

(i) **Notice and Approval.** All leases shall be in writing and in a form approved by the Board of Directors prior to the effective date of the lease. At least seven days before entering into a lease, the Owner shall provide the Board with: (1) a copy of the proposed lease; (2) the names, phone numbers, work locations and work phone numbers of the proposed tenants and all other Occupants of the Lot; (3) the Owner's primary

residence address and phone number, work location and work phone number; and (4) such other information required by the Board. If the form of a lease is disapproved, the Board shall notify the Owner what changes are required to bring the lease into compliance with the Association Legal Instruments and rules. Nothing herein gives the Board the right to approve or disapprove a proposed tenant; the Board's approval or disapproval shall be limited to the form of the proposed lease. Within 10 days after executing a lease for a Lot, the Owner shall provide the Board with a copy of the executed lease.

(ii) **Lease Terms.** Lots may be leased only in their entirety; no rooms or fractions of Lots may be leased without prior written Board approval. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one year, except with written Board approval.

(iii) **Liability for Assessments; Compliance.** The Owner must provide the tenant copies of the Association Legal Instruments and rules.

The following provisions are incorporated into each lease of any Lot, whether or not expressly stated therein:

(a) **Compliance with Association Legal Instruments and Rules.** All terms defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Arden Trace are incorporated herein by this reference. The Owner and each tenant and Occupant shall comply with all provisions of the Association Legal Instruments and rules. The Owner and tenant also are responsible for violations by any Occupants and guests of the Lot; notwithstanding the fact that such Occupants are fully liable and may be sanctioned for any such violation.

If a Lot is leased or occupied in violation of the Association Legal Instruments or rules, or if the Owner, tenant, Occupant or guest violates the Association Legal Instruments or rules, the Association's Board of Directors shall be authorized to take all enforcement actions against the Owner, tenant and/or Occupant authorized under the Association Legal Instruments or rules.

(b) **Use of Recreational Facilities.** The Owner transfers and assigns to the tenant, for the term of the lease, all rights and privileges the Owner has to use any recreational facilities on the Common Property.

(c) **Liability for Assessments.** When an Owner who is leasing his or her Lot fails to pay an assessment or any other charge to the Association when due, the delinquent Owner hereby consents to the assignment of any rent received from the tenant during the period of the delinquency. In such case, upon request by the Board, the tenant shall pay to the Association all unpaid assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by the tenant. However, the tenant need not make such payments to the Association in excess of or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by the tenant shall reduce, by the same amount, the tenant's obligation to make monthly rental payments to the Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

C. Enforcement.

If a Lot is leased or occupied in violation of the Association Legal Instruments or rules, or if the Owner, Occupant or guest violates the Association Legal Instruments or rules, such

violation is deemed to be a default under the terms of any lease or occupancy. In addition to all other remedies permitted by this Declaration, such default authorizes the Owner and/or the Association, as the Owner's delegate and attorney-in-fact, to terminate the lease and/or occupancy and to evict all Occupants, without liability, in accordance with Georgia law. The Association also may require the Owner to evict the Occupants.

D. Grandfathering Definitions.

(i) **"Grandfathered Owner"** means an Owner who is lawfully leasing his or her Lot on the Effective Date. To qualify as a Grandfathered Owner, the Owner must, within 30 days of the Effective Date, provide the Board with a copy of the lease in effect on the Effective Date. Grandfathering shall apply only to the Lot owned by such Grandfathered Owner on the Effective Date. Grandfathering shall automatically expire and any lease of the Lot shall automatically terminate on the earlier of: (1) the date the Grandfathered Owner conveys title to the Grandfathered Lot to any Person (other than the Owner's spouse); (2) the date the Owner occupies the Lot as his or her primary residence; (3) the date that all current Occupants of the Grandfathered Lot vacate and cease to occupy the Lot; (4) any termination, renewal, modification or extension of the existing lease; or (5) the date the Owner of the Grandfathered Lot ceases to lease his or her Lot for 60 consecutive days.

(ii) **"Grandfathered Lot"** means the Lot owned by a Grandfathered Owner on the Effective Date hereof.

11. SALE OF LOTS.

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

Within seven days after receiving title to a Lot, the purchaser or grantee of the Lot shall give the Board written notice of his or her ownership of the Lot. As part of the notice, the new Owner shall furnish the Owner's name, mailing address and such other information required by the Board.

12. INSURANCE.

A. Hazard Insurance on Common Property. The Board of Directors shall obtain hazard insurance for all insurable improvements on the Common Property. This insurance shall include, at a minimum, coverage for fire, wind, storm, hail, vandalism, malicious mischief and civil commotion and shall be in an amount sufficient to cover the full replacement cost of such insurable improvements. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

B. Association Liability Insurance. The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, in their capacities as such, with a combined single limit of at least \$1,000,000.00 per occurrence.

C. Directors' and Officers' Liability Insurance. The Board shall obtain a directors' and officers' liability insurance policy with a limit of at least \$1,000,000.00.

D. Fidelity Insurance. The Board shall obtain a fidelity bond or dishonesty insurance on directors, officers, employees, and other persons handling or responsible for the Association's funds, regardless of whether they are compensated by the Association. If reasonably available, the fidelity bond or dishonesty insurance shall cover at least one-quarter of the annual assessments from all members plus the reserve funds in the custody of the Association at any time during the term of the bond or policy. The bond or policy must provide that it may not be canceled, substantially modified or subject to non-renewal without at least 30-days prior written notice to the Association.

E. Additional Association Insurance. The Board may obtain such additional insurance as it deems appropriate.

F. Premiums and Deductibles on Association Policies. Premiums for all Association insurance shall be a Common Expense. The policies may contain reasonable deductibles. Deductibles shall not be subtracted from the face amount of the policies in determining whether the insurance equals the full replacement cost of the insurable improvements.

G. General Insurance Provisions. In addition to any other terms the Board deems appropriate, all Association insurance shall be governed by the following provisions:

- (i) All policies shall be written with a company licensed to do business in Georgia;
- (ii) All policies on the Common Property shall be in the name of the Association for the benefit of itself and its members;
- (iii) The Board shall have exclusive authority and the right to assign the authority to adjust losses under all Association insurance policies;
- (iv) the insurance carried by the Association shall be primary and shall not be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees;
- (v) all hazard insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if reasonably available; and
- (vi) a qualified person who is in the real estate industry and familiar with construction in the county where the Community is located shall review the Association's hazard insurance policy at least bi-annually to evaluate the sufficiency of such coverage.

H. Individual Lot Owner Insurance. Each Owner shall carry hazard insurance on the Owner's Lot and the structures thereon meeting the same requirements as set forth in subparagraphs (A), (F), (G)(i) and (G)(v) of this Paragraph for insurance on the Common Property.

13. REPAIR AND RECONSTRUCTION AFTER CASUALTY DAMAGE.

A. Common Property. In the event of damage to or destruction of any structure on the Common Property, the Board of Directors shall arrange for and supervise the prompt repair or reconstruction of such structure, with such improvements or modifications it deems appropriate, unless 80% of the Owners vote not to do so.

(i) **Construction Fund.** Any insurance proceeds collected on a claim against any Association hazard policy and any special assessments collected pursuant to subparagraph (2) below shall constitute a construction fund to be used by the Board for repair or restoration pursuant to this Paragraph.

(ii) **Proceeds.** If the proceeds of insurance are not sufficient to defray the Board's estimated or actual costs of repair or reconstruction, including, but not limited to, any professional fees and premiums for construction bonds the Board deems necessary, the Board may levy a special assessment against all Owners without the necessity of a membership vote or compliance with any other requirements for approval of special assessments in this Declaration. Any surplus funds remaining after the repair or reconstruction is completed shall be common funds of the Association to be used as determined by the Board.

B. Lots. In the event of damage to or destruction of any structure on a Lot, the Owner shall either: (1) within 180 days, repair or reconstruct such structure in accordance with plans and specifications approved by the ACC; or (2) within 60 days, clear the Lot of all debris and sod or landscape all portions of the Lot as approved by the ACC.

14. EMINENT DOMAIN.

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

If proceeds from the condemning authority are not sufficient to defray the Board's estimated or actual costs of reconstruction, including, but not limited to, any professional fees and premiums for construction bonds the Board deems necessary, the Board may levy a special assessment against all Owners without the necessity of a membership vote or compliance with any other requirements for approval of special assessments in this Declaration. Any surplus funds remaining after the reconstruction is completed shall be common funds of the Association to be used as determined by the Board.

15. EASEMENTS.

A. Easements for Use and Enjoyment. Every Owner shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his or her Lot, subject to the Association's right to:

(i) charge reasonable admission and other fees for the use of any portion of the Common Property;

(ii) limit the number of Owners' guests who may use the Common Property;

(iii) suspend an Owners' voting rights and rights to use the Common Property as set forth in this Declaration;

(iv) the right of the Association to borrow money for the purpose of improving the Common Area or any portion thereof, or constructing, repairing or improving any facilities located or to be located thereon and, upon the assent of two-thirds of the members eligible to vote, to give as security a mortgage conveying all of or any portion of the Common Area. This lien and encumbrance of any such mortgage, however, shall

be subject and subordinate to all rights, interests, easements and privileges herein reserved or established for the benefit of any Owner or the holder of any mortgage, irrespective of when executed, given by Owner; and

(v) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective until approved by 2/3 of the members eligible to vote, agreeing to such dedication or transfer.

The Owners' rights and easements granted in this Paragraph are subject to: (1) all other rights of the Association and other Owners set forth in this Declaration, the Bylaws or the Articles of Incorporation; and (2) all encumbrances and other matters of public record affecting title to the Common Property.

B. Easements for Utilities. There is hereby reserved to the Association, or its designee, blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repair, replacement, and maintenance of: (a) gas, water, sanitary sewer and electricity services and all other utilities serving any portion of the Community; (b) any water runoff and storm drainage systems; and (c) any other services such as, but not limited to, any telephone and telecommunication systems, master television antenna system, cable television system or security system serving the Community. The Board of Directors has the right to grant a specific license or easement by separate recordable document to any party furnishing such utilities or services.

C. Easement for Entry Features. There is hereby reserved, in a separately recorded front entry easement, if any, to the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features and similar streetscapes for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features. Owners shall not alter, remove or add improvements to any entry features on any Lot, or any part of any easement area associated therewith without the prior written consent of the ACC.

D. Public in General. The easements and rights created in this Paragraph do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the Cobb County, Georgia land records. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Community), all or any portion of the Community that, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

16. **AUTHORITY AND ENFORCEMENT**

The Community shall be used only for those uses and purposes set out in this Declaration. Every Owner and Occupant shall comply with this Declaration, the Bylaws and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations. In addition to any rights the Association may have against an Owner's family, guests, tenants or Occupants, as a result of such person's violation of the Association Legal Instruments, the Association may take action under this Declaration against the Owner as if the Owner committed the violation.

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

In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions or those of the ACC. All costs of any such action, including reasonable attorney's fees, may be assessed against such Lot. Furthermore, the Board shall have the authority to record in the Cobb County land records notices of violation of the provisions of this Paragraph.

The Association, acting through the Board, shall be entitled to stop any construction which is not in conformance with approved plans.

The Board of Directors shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote and/or to use the Common Property for violation of any duty imposed under the Declaration, Bylaws or Association rules. However, nothing herein shall authorize the Association or the Board to deny ingress and egress to or from a Lot. If any tenant or Occupant of a Lot violates the Declaration, Bylaws or Association rules, a fine may be imposed against the Owner and/or Occupant, as set forth below. The failure of the Board to enforce any provision of the Declaration, Bylaws or Association rules shall not be deemed a waiver of the right of the Board to do so thereafter.

In any enforcement action taken by the Association under this Paragraph, to the maximum extent permissible, all costs incurred by the Association in abating a violation or otherwise taking action to enforce the Declaration, Bylaws or Association rules, including reasonable attorneys' fees actually incurred, may be assessed against the violating Owner and/or Occupant pursuant to Paragraph 5(B) above.

A. Fining and Suspension Procedure. The Board of Directors shall not impose a fine, suspend the right to vote or suspend the right to use the Common Elements, unless and until the Association has sent or delivered written notice to the violator as provided in subsection (i) below. However, compliance with this subparagraph shall not be required for the following: (i) late charges on delinquent assessments; (ii) suspension of voting rights if an Owner is shown on the Association's records to be more than thirty (30) days delinquent in any payment due the Association, in which case suspension of the right to vote shall be automatic; (iii) suspension of the right to use the Common Property if an Owner is shown on the Association's records to be more than thirty (30) days delinquent in any payment due the Association, in which case suspension of the right to use the Common Elements shall be automatic; provided, however, suspension of parking privileges shall require compliance with Paragraph 9 (H) above.

(i) **Notice.** If any provision of the Declaration or Bylaws or any Association rule is violated, the Board of Directors shall send the violator written notice identifying the violation and fine(s) and/or suspension(s) being imposed and advising the violator of the right to request a hearing before the Board to contest the violation or the fine(s) and/or suspension(s) or to request reconsideration of the fine(s) and/or suspension(s). Fines and/or suspensions may be effective or commence upon the sending of such notice or such later date specified in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge the fine(s) and/or suspension(s). In the event of a continuing violation, each day the

violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(ii) **Hearing.** If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board of Directors shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time. Failure to request a timely hearing as provided herein shall result in loss of the right to challenge and request reconsideration of the fines.

B. Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Board of Directors may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking regulations) and/or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity for compliance with the procedure set forth in subparagraph (a) above.

The Association or its duly authorized agent shall have the power to enter upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws or the rules and regulations; provided, however, the violating Owner or Occupant is given at least two days prior written notice if the condition is on the common property, or five days if the condition is on a Lot, requesting that the violation be removed and abated and the property restored to substantially the same condition as existed prior to the structure, thing or condition being placed on the property and causing the violation. Such removal, abatement and restoration shall be accomplished at the violator's sole cost and expense. If the Association exercises its right subject to this subparagraph, all costs of self-help, including but not limited to, reasonable attorneys' fees actually incurred, shall be assessed against the violating Owner or Occupant and shall constitute a lien against the Lot. All such amounts shall be collected as an assessment pursuant to this Declaration. Additionally, the Association shall have the authority to record in the Cobb County land records a notice of violation identifying any uncured violation of the Declaration, Bylaws or rules and regulations regarding the Lot.

C. Failure to Enforce. Notwithstanding the above, no right of action shall exist against the Association for failure of enforcement where: (i) the Board of Directors determines that the Association's position is not strong enough to justify taking enforcement action; (ii) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (iii) the Owner or party asserting a failure of enforcement possesses an independent right to bring an enforcement action therefore at law or in equity and has failed to do so.

17. AMENDMENTS.

A. Member Approval Procedure. Except where a higher vote is required for action under any other provisions of this Declaration, the Bylaws or by the Act, this Declaration may be amended with the approval of Owners holding 66-2/3% of the total Association vote. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Cobb County, Georgia land records.

B. Amendments to Comply with Law or Conform Documents. Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend this

Declaration and the Bylaws to comply with any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA"), or to resolve conflicts between this Declaration, the Bylaws, the Articles, and applicable laws.

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

18. GENERAL PROVISIONS.

A. **Security.** The Association may, but shall not be required to, provide measures or take actions which directly or indirectly improve security in the Community. Each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security. The Association has no duty to provide security in the Community. Furthermore, the Association does not guarantee that Owners, tenants, Occupants and other people will not commit criminal acts in the Community or that unauthorized people will not gain access to the Community. It shall be the responsibility of each Owner to protect his or her person and property, and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

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

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

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

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

F. **Use of Words "Arden Trace".** "Arden Trace" is a service mark of the Association. No person shall use the term "Arden Trace" or any derivative in any printed or promotional material without the Association's prior written consent. However, Owners may use the terms "Arden Trace"sm in printed or promotional matter where such term is used solely to specify that particular property is located within the

Community. Any use of the name "Arden Trace"SM shall be in a manner in which proprietary rights to such name are protected.

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

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

19. PREPARER.

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

IN WITNESS WHEREOF, the undersigned officers of Arden Trace Homeowners Association, Inc., hereby certify that the above amendment to the Original Declaration and the following amendment to the Original Bylaws were duly adopted by the required majority of the Association and its membership, with any required notices duly given.

This 20 day of November, 2006.

ARDEN TRACE HOMEOWNERS ASSOCIATION, INC.

Sworn to and subscribed to before me this 20 day of November 2006.

By: [Signature] (Seal)
President

Attest: [Signature] (Seal)
Secretary

[Signature]
Witness Shayle Matheson

[Signature]
Notary Public STACY BEARDEN
[Notary Seal] My commission EXPIRES 10-27-2007

[CORPORATE SEAL]



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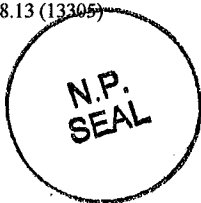


EXHIBIT "A"

SUBMITTED PROPERTY

ALL that tract or parcel of land lying and being in Land Lots 148 and 213 of the 16th District, Second Section of Cobb County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin located at the common corner of Land Lots 213, 214, 219 and 220, said District and Section; thence in a northerly direction along the western boundary line of said Land Lots 213 and 148, the following courses and distances: north 02 degrees 12 minutes 38 seconds east, 167.42 feet to an iron pin; north 02 degrees 33 minutes 37 seconds east, 199.35 feet to an iron pin; north 02 degrees 00 minutes 28 seconds east 400.62 feet to an iron pin; north 02 degrees 13 minutes 07 seconds east, 449.76 feet to an iron pin; north 02 degrees 14 minutes 07 seconds east, 539.61 feet to an iron pin; north 02 degrees 38 minutes 21 seconds east, 142.66 feet to an iron pin; north 02 degrees 19 minutes 48 seconds east, 298.15 feet to an iron pin located at the point of intersection of the western boundary line of said Land Lot 148 and the southern right-of-way line of Shiloh Road; thence north 83 degrees 32 minutes 39 seconds east, along the southern right-of-way line of Shiloh Road, 538.57 feet to an iron pin; thence north 83 degrees 40 minutes 09 seconds east, continuing along the southern right-of-way line of Shiloh road, 207.29 feet to an iron pin; thence south 05 degrees 42 minutes 53 seconds east, 567.95 feet to an iron pin; thence north 87 degrees 06 minutes 15 seconds west 35.00 feet to a point; thence south 32 degrees 38 minutes 20 seconds west 89.23 feet to a point; thence south 5 degrees 44 minutes 20 seconds east 65.00 feet to a point; thence counterclockwise along the arc of a circular curve, an arc distance of 316.68 feet to a point (the preceding arc being subtended by a chord bearing south 24 degrees 56 minutes 43 seconds east, 310.77 feet); thence south 58 degrees 38 minutes 41 seconds west, 559.94 feet to a point; thence south 11 degrees 21 minutes 19 seconds east, 410.00 feet to a point; thence south 20 degrees 21 minutes 19 seconds east, 230.00 feet to a point; thence south 09 degrees 38 minutes 41 seconds west, 70.00 feet to a point; thence south 20 degrees 21 minutes 19 seconds east, 360.00 feet to a point located on the southern boundary line of said Land Lot 213; thence north 88 degrees 21 minutes 19 seconds west, along the southern boundary line of said Land Lot 213, 585.21 feet to an iron pin; thence north 88 degrees 19 minutes 50 seconds west, continuing along the southern boundary line of said Land Lot 213, 149.87 feet to an iron pin located at the common corner of Land Lots 213, 214, 219 and 220; said tract containing 34.3 acres.