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*Jay C. Stephenson*

Jay C. Stephenson  
Clerk of Superior Court Cobb Cty. Ga.

*ma*  
After Recording Return to:  
Morris| Hardwick| Schneider, LLC  
332 Washington Street  
Suite 104  
Gainesville, Ga 30501

**DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR  
PARK TRAIL  
COBB COUNTY, GEORGIA**

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**DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR PARK TRAIL  
COBB COUNTY, GEORGIA**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS is made by VENTURE HOMES, INC., a Georgia corporation (the "*Declarant*").

WITNESSETH:

WHEREAS, Declarant is the owner of all that tract or parcel of land lying and being in Land Lot 781 and 848 of the 19<sup>th</sup> Land District, Cobb County, Georgia, as shown on the legal description attached hereto as Exhibit "A", incorporated herein, less and except any portions thereof dedicated to Cobb County, Georgia (the "Property"); and

WHEREAS, Declarant intends to impose on the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and to establish a procedure for the overall development, administration, maintenance and preservation of the Property; and

WHEREAS, in furtherance of such plan, it is desirable to create Park Trail Townhome Association, Inc. to own, operate, maintain and/or manage, as applicable, the Area of Common Responsibility (as defined below) and to administer and enforce the covenants and restrictions and design guidelines imposed hereby; and

WHEREAS, it is intended that every owner of any of the Lots automatically, and by reason of such ownership in this Declaration, become a Member of the Association and be subject to its rules and regulations and the assessments and charges made by the Association;

NOW THEREFORE, Declarant does hereby submit the Property to the provisions of this Declaration. This document establishes a mandatory membership homeowners association, but does not, and is not, intended to submit the Property to the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.*

**ARTICLE I.  
DEFINITIONS**

As used in this Declaration, the following terms shall have the meanings ascribed to them in this Article, such definitions being cumulative of those set forth elsewhere in this Declaration.

*"Additional Property"* shall mean any and all real property lying and being within five (5) miles of the Property.

*"Annual Assessment"* shall have the meaning specified in the Article entitled "ASSESSMENTS", and shall constitute the assessments which, pursuant to the provisions of such Article, shall be levied by the Association against all Lots each year for the purpose of raising the funds necessary to pay the "Annual Expenses" (as that term is defined in such Article).

*"Architectural Control Committee"* shall mean those individuals appointed to have jurisdiction over construction on or within any portion of the Property and responsibility for administration of design guidelines, as more fully described in the Article entitled "Architectural Control".

*"Area of Common Responsibility"* shall mean the Common Areas, including but not limited to the private streets, private drives and entrance monuments, together with all additional areas and obligations which by the terms of this Declaration or by contract or agreement with any other Person become the responsibility of the Association.

*"Articles of Incorporation"* shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

*"Association"* shall mean Park Trail Townhome Association, Inc., a Georgia corporation.

**"Board of Directors"** shall mean the body responsible for the administration of the Association, as provided in the Bylaws.

**"Bylaws"** shall mean the Bylaws of the Association, attached as the same may be amended from time to time.

**"Common Areas"** shall mean, singularly or collectively, as applicable, all land and personal property, and all facilities and improvements located thereon, which hereafter shall be deeded to, or acquired by, the Association for the common use and enjoyment of the Owners.

**"Community Wide Standards"** shall mean the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors or the Architectural Control Committee.

**"County Clerk"** shall mean the Clerk of the Superior Court of the county where the Property is located.

**"Declarant"** shall mean Venture Homes, Inc., a Georgia corporation, and shall include any successor or assign who shall acquire any portion of the Property for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, however, that there shall be only one "Declarant" hereunder at any one time.

**"Declaration"** shall mean this Declaration of Covenants, Restrictions and Easements, as the same may be hereafter amended in accordance with the terms hereof.

**"Development Period"** shall mean the period of time during which the Declarant owns any property that is subject to this Declaration or has the unilateral right to subject Additional Property to this Declaration pursuant to Article II. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument with the County Clerk.

**"First Mortgage"** shall mean a deed or other document by means of which title to any Lot is conveyed or encumbered to secure a debt of first priority.

**"Improved Lot"** shall mean a Lot (i) upon which there is located a structure for which a certificate of occupancy has been issued by the applicable governmental authority, and (ii) which has been sold to a Person who is not the Declarant.

**"Limited Use Areas"** shall mean the front stoop, driveway, deck and patio appurtenant to each Townhome that was constructed as part of the original construction of each Townhome.

**"Lot"** shall mean each portion of the Property which may be independently owned and conveyed and which is intended for development, use, and occupancy as a residence for a single family, as shown and indicated by the word "Unit" or "Lot" on any of the Plats which are hereafter recorded.

**"Member"** shall mean a Person subject to membership in the Association pursuant to Article V hereof.

**"Owner"** shall mean any Person who is a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Lot; provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be an Owner.

**"Person"** shall mean a natural person, corporation, trust, partnership or any other legal entity.

**"Plats"** shall mean all plats for any portion of the Property, and any amendments to such Plats, which are hereafter recorded in the County Clerk's plat book records.

**"Property"** shall have the meaning ascribed to it hereinabove.

**"Supplemental Declaration"** shall mean an instrument filed with the County Clerk which imposes

additional restrictions and/or obligations on the land described in such instrument.

**"Townhome"** shall mean the dwelling contained within a Lot.

**"Unimproved Lot"** shall mean a Lot which is not an Improved Lot.

**"Unit"** as referred to on the Plat shall mean a Townhome.

## **ARTICLE II. PROPERTY SUBMITTED TO THIS DECLARATION**

**Section 1. Lots Hereby Subjected to this Declaration.** The Declarant, for itself and its successors and assigns, does hereby submit the Property and the Lots to this Declaration. The Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration, including, but not limited to, the lien provisions set forth herein. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Lots shall be a permanent charge thereon, and shall run with the Lots.

**Section 2. All Lots Bear the Burdens and Enjoy the Benefits of this Declaration.** Every Owner, by taking record title to a Lot, agrees to all of the terms and provisions of this Declaration. Each of the Lots is subject to all burdens, and enjoys all benefits, made applicable hereunder.

**Section 3. Annexation of Additional Property.** The Declarant may, at any time, and from time to time, prior to ten (10) years from the date hereof, subject all or part of the Additional Property to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration by executing and recording with the County Clerk an amendment to this Declaration describing the property being annexed. Declarant further has the right to convey to the Association additional Common Areas contained within such Additional Property, the maintenance of which will increase the Annual Assessment as provided elsewhere herein and may increase the amount of Annual Assessment which shall be levied against each Lot.

From and after such recording, the annexed property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including, without limitation, all lien and assessment provisions set forth in this Declaration, and all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration shall be a permanent charge on, and shall run with, such Additional Property.

No approval from any Member of the Association, or from anyone else whomsoever, shall be required for the Declarant to subject Additional Property to this Declaration.

**Section 4. Withdrawal of Property.** The Declarant reserves the right to amend this Declaration during the Development Period, for the purpose of removing any portion of the Property from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Property. This provision may also extend to the Declarant's right to deed over property to any governmental entity as required or deemed necessary in Declarant's discretion. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if same is not the Declarant. If the property is part of the Common Areas, the Association shall consent to such withdrawal.

**Section 5. Lot Boundaries.** In the event that the side boundary of a Townhome abuts the side boundary of another Townhome, the side boundary of each of such Lots shall be a line consistent with and along the center of all firewalls separating each Lot from the abutting Lot. In the event that the side boundary of a Townhome does not abut the side boundary of another Townhome, the side boundary of such Lot shall be a line consistent with and along the outer exterior surface of the outside wall of such Townhome. In the event of any discrepancy between the boundaries of a Lot, as described herein, and the boundaries of such Lot when shown on the recorded Plats, the description of the boundaries of the Lot set forth herein shall control. All of the area within the boundaries of each of the Lot, as herein described, and as shown and depicted on the recorded Plats, shall for all purposes constitute real

property which may be owned in fee simple, subject to the terms, provisions, liens, charges, covenants, easements and restrictions of this Declaration.

### ARTICLE III. ASSOCIATION PROPERTY

Section 1. Common Areas and Association Property. The Declarant shall have the right to transfer and convey to the Association any portion of the Property. All portions of the Property which the Declarant shall so transfer or convey to the Association shall thereafter constitute Common Areas. Said right may be exercised by the Declarant any time, and from time to time, prior to ten (10) years from the date hereof. Common Areas shall be conveyed to the Association subject to the rights and easements set forth in this Article, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements.

Section 2. Member's Rights in Association Property. Every Owner of every Lot shall have a non-exclusive right and easement of enjoyment and use in and to the Common Areas (other than the Limited Use Areas, which are reserved for the use of the Owner of the Townhome to which they are appended) and such right and easement shall be appurtenant to, and shall pass with, the title to the Lot(s) owned by such Owner. The right and easement of enjoyment and use of the Common Areas are and shall be subject to the easements which are described in this Article and to the right of the Association to promulgate reasonable rules and regulations regarding the use of Common Areas, and the right of the Association, as provided in the Bylaws, to suspend the enjoyment rights of the owner of any Lot during any period in which any assessment which is due to the Association from such owner remains unpaid, and such period as the Board of Directors may consider appropriate for any infraction of its published rules and regulations. No such suspension, however, shall prohibit the Owner of any Lot from using the Common Areas to the extent necessary for such Owner to have access to and from his Lot.

The Board of Directors may permit other persons who are not residents of any Lots to use the Common Areas upon such terms and conditions, and for the payment of such fees, as shall be determined by the Board of Directors.

Section 3. No Partition. The Common Areas shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the Property and without the written consent of all holders of all mortgages encumbering any portion of the Property.

Section 4. Condemnation. In the event that any part of the Common Areas shall be taken by any authority having the power of condemnation or eminent domain or conveyed in lieu of, and under threat of, condemnation by the Board acting on the written direction of the Owners of at least 67% of the Lots and, during the Development Period, the written consent of Declarant, the Association shall restore or replace the improvements on the remaining land included in the Common Areas to the extent available unless, within sixty (60) days after such taking the Owners of at least 67% of the Lots and Declarant (if during the Development Period) otherwise agree. The provisions of subsection 6 below regarding funds for the repair of damage or destruction shall apply. If the taking or conveyance does not involve any improvements on the Common Areas, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

Section 5. Damage or Destruction. In the event that any improvements located on any Common Areas shall be damaged or destroyed on account of the occurrence of any casualty, the Board of Directors shall proceed with the filing and settlement of all claims arising under any policy of insurance maintained by the Association with respect to such improvements and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements.

Any such damage or destruction shall be repaired or reconstructed unless it shall be decided, within ninety (90) days after the occurrence of casualty, by the Owners of at least 67% of the Lots, and by Declarant if during the Development Period, not to so repair or reconstruct such damage. In the event that it shall be so decided not to repair or reconstruct some damage or destruction, the proceeds of any insurance as may become payable to the Association as a result of such damage or destruction 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 Lot. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the members, levy Special Assessments to cover the shortfall.

Section 6. Actions Requiring Owner Approval. If the U.S. Department of Housing and Urban Development is insuring the Mortgage on any Lot or the U.S. Department of Veterans Affairs is guaranteeing the Mortgage on any Lot, then any conveyance or mortgaging of the Common Areas shall require the consent of the Owners of at least 67% of the Lots owned by persons other than the Declarant and, during the Development Period, the consent of Declarant. Notwithstanding anything to the contrary in this section, however, the Association, acting through the Board, may grant easements over the Common Areas for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

#### ARTICLE IV. EASEMENTS OVER THE PROPERTY

Section 1. Easements and Agreements Regarding the Property. The Property shall be subject to, and Declarant and the Association do hereby grant, the following easements:

(a) Easements Shown on Plats or of Record. The Property shall be subject to all easements, borders, buffers and the like which are shown and depicted on the Plats or recorded prior to this Declaration at the County Clerk office as affecting and burdening the Property, with specific recognition by this Declaration for, but not limited to, a Declaration of Easements recorded in Deed Book 14327 Pages 6077 at the County Clerk office.

(b) Limited Use Areas. Subject to the maintenance easement provided for in Article IV, Section 2(b) below, the Limited Use Areas appurtenant to each Townhome are reserved for the exclusive use and enjoyment of the Owner and/or occupants of such Townhome.

(c) Use of Common Areas. Declarant hereby reserves an easement for the exclusive use of all portions of the Common Areas (other than the Limited Use Areas) as may be reasonably desirable, convenient or incidental to the construction and installation of improvements on, and the sale of, any Lots, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements shall be exercisable by Declarant and any and all persons who the Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers and builders, and their subcontractors, of residences upon the Lots, irrespective of whether such persons are affiliated with the Declarant. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate thirty (30) days after the date that all of the Lots are Improved Lots. Such easements shall and do exist without affecting the obligation of the Owner of any Lot to pay assessments or charges coming due during such period of time as portions of the Common Areas shall be used by authorized persons pursuant to the exercise of the easements herein stated.

(d) Declarant Activities. Notwithstanding any provision contained in this Declaration, the Bylaws or the Articles of Incorporation to the contrary, or any amendments thereto, until the expiration of the Development Period, it shall be expressly permissible for Declarant, and any Person authorized by Declarant, to maintain and carry on, upon such portion of the Property as Declarant may deem necessary, such facilities and activities as may reasonably be desired by the Declarant and such authorized Persons, including but without limitation, the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Property; the right to tie into any portion of the Property with driveways, parking, areas and walkways; the right to tie into and/or maintain and repair any device (without a tap-on or any other fee for doing so), replace, relocate, maintain, and repair any device which provides utility or similar service including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under, or over the Property; the right to carry on sales and promotional activities on the Property; and the right to construct and operate business offices, signs, construction trailers, and model residences.

Section 2. Easements Over Lots. The Lots shall be subject to, and the Declarant does hereby grant, the following non-exclusive perpetual and temporary easements for the enjoyment of Declarant, the Association, any builders and subcontractors authorized by Declarant, the Members, the Owners, and the successors-in-title of each:

(a) Entry. Each Lot shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go upon such Lot under such circumstances and for such purposes as are described elsewhere in this Declaration.

(b) Maintenance. Each Lot shall be also subject to a perpetual easement in favor of the Association and its contractors for the maintenance of the Lots as provided for in the Article entitled "Maintenance" herein. There is further reserved for the benefit of each Lot a reciprocal appurtenant easement between all adjacent Lots, or between a Lot and the adjacent Common Areas, for the purpose of maintaining or repairing the improvements located on each Lot. All such maintenance shall be performed with a minimum of interference to the quiet enjoyment of the adjacent Lot's Owner. Except in emergencies, entry onto a Lot shall occur only after providing the Owner of such Lot not less than forty-eight (48) hours advance notice and shall occur only during reasonable hours. Each Owner and the Association shall cooperate with each other Owner and/or occupant for purposes of exercising these easement rights and these easements shall be exercised only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner or Association exercising this easement right shall pursue such work promptly and diligently and shall promptly repair any damage that arises out of such maintenance or repair work to the Lot(s) over which this easement is exercised.

(c) Encroachments and Overhangs. Each Lot shall have a three (3) foot easement as measured from any point on the common boundary between such Lot and any adjoining Lot, or between such Lot and the Common Areas, for encroachments and overhangs due to the placement or settling of the improvements constructed, reconstructed or altered thereon, unless such encroachment or overhang was due to the willful act of an Owner or the Association.

(d) Slope Control. Each Lot shall be subject to an easement for slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow.

(e) Surface Water Drainage. Each Lot shall be subject to a perpetual easement in favor of the Association and all other Lots for the drainage of surface waters over and across such Lot.

(f) Utilities. Each Lot shall be subject to a perpetual easement in favor of the Declarant, the Association, and authorized builders and subcontractors, as well as any public utility company, water main, water services, sewer services or cable company, for the erection, installation, construction and maintenance of wires, lines, conduits, and attachments both above and below ground in connection with the transmission of electricity, gas, water, telephone, community antennae or satellite dish, television cables and other utilities. The easement rights to which the Lots shall be subject shall include the right of contractors engaged by the Association to enter upon said Lots from time to time as necessary in order to perform repair and maintenance work. The Association shall be responsible for the maintenance and management of the water and sewer facilities.

(g) Construction and Boundary Line Improvements. Each Lot shall be subject to a temporary construction easement in favor of the Declarant, authorized builders and subcontractors, and adjoining Lot Owners for construction activities on any Lot, including, but not limited to, installation of boundary line improvements such as walls. Any improvement made by an adjoining Lot Owner shall be subject to the architectural control provisions contained herein and must be approved by Declarant or the Association, as applicable, prior to installation.

## ARTICLE V. THE ASSOCIATION

Section 1. The Association. Prior to the date this Declaration has been filed for record with the County Clerk, Declarant has caused the Association to be formed, and the Association does now exist, under its Articles of Incorporation and Bylaws.

The Association is and shall be responsible for the maintenance of the Common Areas, the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as are required of the Association hereunder or as the Board of Directors shall deem to be in the best interests of the members of the Association.

Section 2. Membership and Voting Rights. Every Owner is and shall be a member of the Association. In



no event shall such membership be severed from the Ownership of such Lot.

Section 3. Suspension of Membership Rights. The membership rights of any member of the Association, including the right to vote, may be suspended by the Board of Directors pursuant to the authority granted in the Bylaws. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the member's Lot in favor of the Association.

Section 4. Meetings of the Membership. All matters concerning the meetings of members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to members, the quorum required for the transaction of business at any meeting, and the vote required on any matter, shall be as specified in this Declaration, or in the Articles of Incorporation or the Bylaws, or by law.

Section 5. Association Acts Through Its Board of Directors. Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the members of the Association must vote. No member of the Board of Directors of the Association or any officer of the Association (including, without limitation, any such individual who shall have been appointed by the Declarant during the Declarant Control Period, as such term is defined in the Bylaws) shall be personally liable to any owner of any Lot for any mistake of judgment or for any other act or omission of any nature whatsoever, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud.

Section 6. Professional Management. The Association may, but shall not be obligated to, obtain and pay for the services of any person or other entity to manage the affairs of the Association, or any part thereof, as the Board of Directors deems to be in the best interests of the Association.

## ARTICLE VI. ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance for an Improved Lot, covenants and agrees to pay to the Association all assessments and charges which are levied by the Association against the Lot(s) owned by such person in accordance with the terms and provisions of this Declaration.

All sums lawfully assessed by the Association against any Lot and the Owner thereof, together with interest thereon and the costs of collection thereof, shall, from the time the sums become due and payable, be the personal obligation of the Owner of such Lot and constitute a continuing lien in favor of the Association on such Lot prior and superior to all other liens whatsoever except: (1) liens for ad valorem taxes on the Lot; (2) the lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording of this Declaration; and (3) the lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the Lot. The covenant to pay assessments herein stated is and shall be a covenant running with land.

Section 2. Purposes of Assessments. The assessments levied by the Association pursuant to this Article shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to the Act, this Declaration, the Articles of Incorporation and the Bylaws (such costs and expenses being herein referred to as the "Annual Expenses"). Without limiting the generality of the foregoing, the Annual Expenses shall include the costs of: payment of all costs and expenses incurred by the Association in connection with the maintenance of the Area of Common Responsibility and the Association's other operations; payment of the premiums for all fidelity bonds and termite bonds which shall be obtained by the Association; the payment of the fees of such management firms as the Board of Directors shall employ; payment of fees for the provision of such professional services as the Board of Directors shall determine to be required by the Association, including but not limited to legal, accounting and architectural services; and such other purposes as the Board of Directors shall deem necessary or desirable to promote the health, safety and welfare of the Association and its members.

Section 3. Determination of Annual Assessment and Initiation Fee. (a) Prior to the commencement of each fiscal year of the Association or at any time it deems best (said fiscal year being specified in the Bylaws), the Board of Directors shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures and reserves based upon such estimate and providing for the total annual assessment to be levied against the members of the Association for such fiscal year (the total assessment which shall be so determined and levied for any fiscal year is herein referred to as the "Annual Assessment"). The assessments provided for herein shall commence as to a Lot on the date that a Lot becomes an Improved Lot, with all Improved Lots being assessed equally. The Declarant shall not pay an Annual Assessment for any Lots that it owns. The Board of Directors shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Lot, to the Owner of every Lot prior to the commencement of the fiscal year during which such Annual Assessment is to be paid. The amount of such Annual Assessment which shall be levied against each Lot shall be due and payable to the Association in such installments as the Board of Directors shall determine and shall be paid to the Association when due without further notice.

(b) At any time during a calendar year, the Board of Directors shall specify a monetary amount for an Initiation Fee. An Initiation Fee will become due only upon transfer of an Improved Lot by an owner to an Owner, at which time the new Owner shall pay an Initiation Fee to the Association. Initiation Fee will apply regardless of whether this transfer from one Owner to another was the first transfer of the Lot as an Improved Lot or any later transfer of the Improved Lot. Transfer of an Improved Lot by an Owner to a spouse or cohabitant shall not create the obligation to pay the Initiation Fee. Declarant shall not pay an Initiation Fee for any Lot that it owns.

Section 4. Special Assessments. If for any reason, including non-payment of any assessments to the Association by the persons liable therefore, the budget adopted by the Board of Directors for any fiscal year shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Board of Directors shall determine that it is in the best interests of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Board of Directors shall have the authority to levy a special assessment against the Lots and the Owners thereof to raise such needed funds. Any special assessment levied by the Board of Directors pursuant to the provisions of this section shall be payable at such times and such installments as the Board of Directors shall determine. Each Improved Lot shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this section; provided that Declarant shall not be obligated to pay any special assessment.

Section 5. Specific Assessments. The Board may levy specific assessments against individual Owners (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, or of any monument, landscaping, detention pond or other thing maintained by the Association, which is occasioned by the acts of individual Owners(s) and not the result of ordinary wear and tear or (ii) for the payment of fines, penalties or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws, or any rules or regulations promulgated hereunder; provided that Declarant shall not be obligated to pay any specific assessment. Failure of the Board to exercise its authority under this section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this section in the future with respect to any expenses.

Upon the establishment of a specific assessment under this section, the Board shall send written notice of the amount and due date of such specific assessment to the affected Owner(s) at least thirty (30) days prior to the date such specific assessment is due.

Section 6. Special Assessment for Working Capital Reserve. Upon the first transfer of title to an Improved Lot and upon each resale of the Lot thereafter, there may be levied against such Improved Lot and paid to the Association a special assessment as may be set from time to time by the Declarant or Board of Directors of the Association. Such amount shall not exceed the amount of the Annual Assessment which shall have been levied against Improved Lots for the calendar year in which such transfer of title shall take place. Declarant or Board shall endeavor to collect such special assessment at the closing of the purchase of the Improved Lot; however, the failure to collect such special assessment at that time shall not excuse the obligation to make such payment.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association. (a) In the event that any member of the Association shall fail to pay, within ten (10) days after the date the same is due and payable, any annual, special, or specific assessment, or any installment of any such assessments which is payable by him to the Association, the entire amount of such assessment, including the portion thereof which would otherwise be payable in installments, may be declared by the Board of Directors to be immediately due and payable in full to the Association. All such amounts so declared by the Board of Directors to be due and payable in full to the Association shall be secured by the lien of the Association on every Lot owned by the delinquent member, which lien shall bind such Lot or Lots in the hands of the then Owner, and his heirs, devisees, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain his personal obligation and shall also pass to his successors in title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which said Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors in title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and successors in title creating any indemnification of the Owner or any relationship of principal and surety as between themselves.

(b) All amounts which the Board of Directors shall declare to be due and payable pursuant to this section shall bear interest from the date of delinquency at the lower of the rate of ten (10%) percent per annum or the highest rate permitted by law, and the Association may bring legal action against the member of the Association personally obligated to pay the same, or foreclose its lien upon the Lot or Lots of such member, in either of which events such member shall also be liable to the Association for all costs and attorneys' fees which the Association shall incur in connection with the collection of such delinquent amounts.

Section 8. Failure to Assess. The failure of the Board to fix the assessment amounts or to deliver to each Owner the assessment notice shall not be deemed a waiver, modification or release of any Owner of the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

## ARTICLE VII. ARCHITECTURAL CONTROL

Section 1. Architectural Restrictions. No building shall be constructed on any Lot unless such building meets all square footage and other requirements that may be set forth in the Plats and is approved by the Architectural Control Committee ("ACC") in accordance with the provisions of this Article.

Section 2. No Combination of Lots. Contiguous Lots may not be combined together without prior written consent of the Board of Directors. In the event that the Board of Directors does approve such a combination, such combination shall thereafter be deemed to be a single Lot for all purposes of this Declaration, except that notwithstanding the foregoing, the amount of assessments for which such single Lot shall be thereafter liable shall be equal to the total assessments for which all of the Lots which were so combined would have been liable had such combination not taken place.

Section 3. Architectural Control Committee. Responsibility for the review of all applications under this Article shall be handled by the ACC, the members of which need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Association. The ACC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ACC in having any application reviewed by architects, engineers or other professionals.

The ACC shall have exclusive jurisdiction over all construction, alterations or additions on any portion of the Property and shall be the sole arbiter of applications and may withhold approval for any reason, including, without limitation, purely aesthetic considerations. The ACC shall have the right, but not the obligation, to promulgate design guidelines and standards for the Property in order to provide guidance to Owners and Builders regarding the approval process, which guidelines and standards may be amended by the ACC at any time and from time to time. Compliance with such guidelines and standards shall not guarantee approval of any application.

Until one hundred (100%) percent of the Lots are Improved Lots, the Declarant retains the right to appoint all members of the ACC, who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board of Directors shall appoint the members of the ACC, who shall thereafter serve and may be removed in the Board of Director's discretion.

Section 4. Architectural Review. (a) No exterior construction, alteration or addition of any nature whatsoever (including but not limited to a building, fence, wall, pool, or other structure, staking, clearing, excavation, grading, filling, change in color or type of any existing improvement, planting or removal of landscaping materials, exterior lighting, placement or installation of statuary, flags, fountains and similar items, improvements or modifications to the roof, or change in any exterior material, color, paint stain or varnish), shall be commenced, placed or maintained upon any Lot until complete and final plans and specifications setting forth the information hereinafter described shall have been submitted to, and approved in writing by, the ACC as to the harmony of the exterior design and general quality with the existing standards of the improvements located on the other Lots, and as to location in relation to surrounding structures and topography. In the event the ACC fails to approve or disapprove such design and location within thirty (30) days after said plan and specifications have been submitted to it, approval will not be required, and this section will be deemed to have been fully complied with.

(b) The plans and specifications, which must be submitted to the ACC prior to the commencement of any such work upon any Lot, as hereinabove provided, shall contain at least the nature, kind, shape, height, materials, color, texture and location of such structure, alteration or landscaping and such other information as the ACC may reasonably request in order to render a decision.

(c) The ACC shall, upon demand, furnish to any member of the Association a certificate in writing signed by a member of the ACC, stating that any exterior addition to, change in, or alteration of any structure or landscaping owned by such member on a Lot is in compliance with the provisions of this section, and such certificate shall be conclusive as to whether the same is in such compliance.

(d) In the event that any construction or alteration or landscaping work is undertaken or performed upon any Lot without application having been first made and approval obtained as provided in paragraph (a) of this section, said work shall be deemed to be in violation of this covenant, and the person upon whose Lot said work was undertaken or performed may be required to restore to its original condition, at his sole expense, the property upon which said work was undertaken or performed. Upon the failure or refusal of any person to perform the restoration required herein, the ACC, or their authorized agents or employees, may, after fourteen (14) days' notice to such person, enter upon the property upon which such unauthorized work has been performed, and make such restoration as the ACC, in the exercise of its discretion, may deem necessary or advisable. The person upon whose Lot such restoration work shall have been so performed shall be personally liable to the Association for all direct and indirect costs which the Association shall incur in the performance of such restoration work, including without limitation attorneys fees, and the liability for such cost shall be secured by all the liens, and shall be subject to the same means of collection, as the assessments provided for in this Declaration. Such costs shall be paid to the Association by the person liable for the same at the same time as the next due Annual Assessment payment, or at such earlier time, and in such installments, as the ACC shall determine.

Section 5. Declarant Exemption. Notwithstanding anything stated to the contrary herein, nothing contained in this Article shall be construed as prohibiting any construction, alteration, addition or removal by the Declarant upon any Lot while such Lot is owned by the Declarant. Any construction, alteration, addition or removal performed by the Declarant upon any Lot while such Lot is owned by the Declarant shall be exempt from the provisions of this Article.

## ARTICLE VIII. RESTRICTIONS

In order to provide for the maximum enjoyment of the Lots by all of the residents thereof and to provide protection for the value of the same, the use of the Lots shall be restricted to, and shall be only in accordance with, the following provisions:

Section 1. Residential Use. All of the Lots shall be restricted exclusively to single-family residential use. The term "single-family" shall include one or more related or unrelated adults, as well as the children of any such adults. No Lot shall at any time be used for any commercial, business or professional purpose. Notwithstanding the foregoing, however, nothing set forth in this section shall prohibit: (a) the Declarant from conducting such sales, leasing and promotional activities on any Lot as said Declarant shall determine; or (b) the owner of any Lot from using a portion of a building located on such Lot as an office, provided that such use does not create regular customer, client or employee traffic to and from such Lot and no sign, logo, symbol or nameplate identifying such business is displayed anywhere on such Lot.

Section 2. Prohibited Activities. No noxious, offensive, unsightly or unkempt activity shall be conducted on any Lot. Each owner of any Lot, his family, tenants, guests and invitees, shall refrain from any act or use of his property which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other resident or residents of any other Lot. Storage or placement of furniture, potted plants, fixtures, appliances, machinery, bicycles, towels, equipment or other goods or chattels on any Limited Use Areas is prohibited except as specifically permitted in this Declaration.

Section 3. Nuisances. No nuisance shall be permitted to exist upon any Lot. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot, or any portion thereof.

Section 4. Animals. No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. Animals must be kept on a leash and be under the physical control of a responsible person at all times while outdoors. Any feces left upon the Common Areas by an animal must be removed by the owner of the animal or the person responsible for the animal. No pet shall be permitted to be an annoyance to any residents or residents of any other Townhome.

No animal determined to be dangerous, in the Board's sole and absolute discretion, may be brought onto or kept on the Property at any time. The Board may remove without notice any animal that presents an immediate danger to the health, safety or property of any resident.

Each Owner who keeps an animal on the Property agrees to indemnify and hold the Association and its directors, officers and agents harmless from any loss, claim or liability of any kind whatsoever arising by reason of such animal.

Section 5. Antennas; Aerials; Satellite Dishes. No transmission antenna of any kind may be erected anywhere on a Lot without the prior written consent of the ACC. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one (1) meter in diameter may be placed, allowed or maintained upon any Lot. DBS and MMDS antennas one (1) meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and rules and regulations of the Association authorized by the FCC or both, as may be amended from time to time. HAM radios, two way radios and other hobby or professional radio communication transmission equipment are prohibited.

Declarant or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus of any size for a master antenna, cable, or other communication system for the benefit of all or a portion of the Property.

Section 6. Clotheslines. No exterior clothesline of any type shall be permitted on any portion of any Lot.

Section 7. Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Lot or a Limited Use Area; (2) street lights in conformity with an established street lighting program for the Property; (3) seasonal decorative lights; or (4) front house illumination of model homes.

Section 8. Mailboxes. No change or addition shall be made to the design, materials or location of the original mailboxes installed by the Declarant for the benefit of the Lots without obtaining the prior written approval of the ACC.

Section 9. Signs. No sign of any kind or character shall be erected on any portion of any Lot, or displayed to the public on any portion of any Lot, without the prior written consent of the Board of Directors, except for customary name and address signs, one customary "for sale" sign advertising a Lot for sale and any sign required by legal proceedings. The restriction herein stated shall include the prohibition of placement of any sign within a building located on any Lot in a location from which the same shall be visible from the outside and the placement of any sign in or upon any motor vehicle.

Section 10. Stoops, Driveways, Decks and Patio Areas. Grills, patio furniture, potted plants and other items may be permitted on decks and patio areas, subject to local ordinances and any rules promulgated by the Association with respect thereto. Any items placed on front stoops and driveways must comply with any rules promulgated by the Association with respect thereto. Detached storage buildings, sheds or animal pens are prohibited.

Section 11. Trash Containers and Collection. No garbage or trash shall be placed or kept on the Property except in covered containers of a type, size and style which are approved by the Board of Directors or as required by the applicable governing jurisdiction, and subject to rules promulgated by the Association. No person shall burn rubbish, garbage or any other form of solid waste on any Lot or on Common Areas or within any right of way of any street in the Property.

Section 12. Vehicles and Parking. The term "vehicles" as used in this section shall include without limitation automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles. No vehicle may be left upon any portion of the Property except upon a driveway, a designated parking space or within a garage. No person shall park any commercial vehicles (including but not limited to any type of vehicle with advertising or lettering), recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles, stored vehicles or inoperable vehicles within the Property, with the exception of emergency vehicle repairs or commercial vehicles which are temporarily parked for the purpose of servicing a Lot or the Property.

All Owner and occupant vehicles must be kept and stored when not in use within the Lot's garage space or driveway. Garage doors must remain closed at all times except for entry and exit by vehicles and except for periods not to exceed two consecutive hours for homeowner related maintenance activities.

The Association may promulgate and enforce additional rules and restrictions regarding vehicles and parking privileges on the Lots and Common Areas.

Section 13. Window Air-Conditioners. No air-conditioner shall be installed in any window of any building located on any Lot, nor shall any air-conditioner be installed on any building located on any Lot so that the same protrudes through any exterior wall of such building.

Section 14. Window Treatments. Except as may be otherwise approved in accordance with the Architectural Control provisions contained in the previous Article, all window treatments visible from the outside of a Lot shall be white or off-white in color. No bed sheets, newspaper, tin foil, or similar materials may be used as window treatments.

Section 15. No Subdivision of Lots. No Lot may be further subdivided into any smaller Lot.

Section 16. Leasing Restrictions. In order to protect the equity of the individual Lot Owners, to carry out the purpose for which the community was formed by preserving the character of the community as a community of predominantly owner-occupied homes and by preventing the community from assuming the character of a renter-occupied apartment complex, leasing of Townhomes shall be governed by the restrictions imposed by this Section. Except as provided herein, the leasing of Townhomes shall be prohibited.

(a) Definitions.

(i) The terms "leasing", "lease" or "leased" shall mean the regular, exclusive occupancy of a Townhome by any person(s) other than the Owner, for which the Owner receives any consideration or benefit including, but not limited to, a fee, service, or gratuity. For purposes hereof, occupancy by a roommate of an Owner occupant shall not constitute leasing.

(ii) Open Leasing Status shall authorize a Townhome to be leased at any time. Each Townhome shall have Restricted Leasing Status unless Open Leasing Status has been conferred upon a Townhome as provided in subparagraph (b) below.

(iii) Restricted Leasing Status shall subject a Townhome to the restrictions on leasing contained in subparagraph (b) below.

(b) General. No Owner of a Townhome in Restricted Leasing Status may lease his or her Townhome if twenty-five (25%) percent or more of the Townhomes are in Open Leasing Status, except as provided in subparagraph (c) below for cases of undue hardship. Any Owner of a Townhome in Restricted Leasing Status may apply in writing to the Board for conversion to Open Leasing Status in accordance with rules and regulations promulgated by the Board. Upon receipt of such written application, the Townhome shall be placed at the end of a waiting list for conversion to Open Leasing Status. At such times as less than twenty-five (25%) percent of the Townhomes are in Open Leasing Status, the Board shall notify the Owner of the Townhome at the top of the waiting list of its conversion to Open Leasing Status, and such Owner shall have ninety (90) days within which to lease the Townhome or it shall automatically revert to Restricted Leasing Status. Any residential Townhome in Open Leasing Status shall automatically be converted to Restricted Leasing Status if the Townhome is not subject to an approved lease for ninety (90) or more consecutive days.

(c) Undue Hardship. Notwithstanding the provisions of subparagraph (b) above, the Board shall be empowered to allow reasonable leasing of a Townhome upon application in accordance with this Paragraph to avoid undue hardship, including, but not limited to the following situations: (1) a Townhome Owner must relocate his or her residence outside the Atlanta metropolitan area and cannot, within six (6) months from the date that the Townhome was placed on the market, sell the Townhome except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner dies and the Townhome is being administered by his or her estate; and (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Townhome, in which case the Townhome Owner must reapply every year for renewal of the hardship exception. Those Owners who have complied with this subparagraph, have demonstrated that the inability to lease their Townhome would result in undue hardship, and have obtained the requisite written Board approval may lease their Townhomes for such duration as the Board reasonably determines is necessary to prevent undue hardship.

Any Owner who believes that he or she must lease his or her Townhome to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application. Any transaction which does not comply with this Paragraph shall be voidable at the Board's option.

(d) Leasing Provisions. Leasing which is authorized hereunder shall be governed by the following provisions:

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

(ii) General. Townhomes may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a

form which is deemed acceptable. There shall be no subleasing of Townhomes or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Townhome, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Townhome. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

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

(aa) Compliance with Declaration, Bylaws, and Rules and Regulations. Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Townhome.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Townhome.

(bb) Use of Common Areas and Amenities. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Areas, the Limited Use Areas appurtenant to the leased Townhome and the use of any and all facilities and amenities of the Property.

(cc) Liability for Assessment. When a Townhome Owner who is leasing his or her Townhome fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be



construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(e) Applicability of this Section. This Section on Leasing shall not apply to any leasing transaction entered into by the Declarant, the Association or the holder of any first Mortgage on a Townhome who becomes the Owner of a Lot through foreclosure or any other means to the satisfaction of the indebtedness secured by such Mortgage.

Section 16. Rules and Interpretation. In all cases, the covenants and restrictions herein contained shall be construed and interpreted in a manner which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development and maintenance herein set forth. Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness, the Board may modify, cancel, limit, create exceptions to, or expand the restrictions contained herein and may create, modify and enforce reasonable rules governing the use of the Property consistent with the law and with other provisions in this Declaration. The Board shall send notice to all Owners concerning any new or amended restrictions or rules prior to the date that such restrictions or rules go into effect. For this purpose, notice may be sent to each Owner by U.S. mail, hand delivery, electronic telecommunication, or publication in a community notice or newsletter delivered or mailed to each Owner.

Section 17. No Waiver of Future Approvals. 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.

## ARTICLE IX. MAINTENANCE

Section 1. Association's Maintenance Responsibility. Except as may be specifically provided otherwise below, the Association shall maintain the Area of Common Responsibility (whether or not constituting Common Areas), including: (a) all entry features to the Property; (b) all streets, parking areas (other than driveways) and sidewalks contained within the Property; (c) any perimeter fencing; (d) all landscaping within any public right-of-way abutting the Property; (e) all storm water detention or drainage facilities serving the Property; (f) termite and wood-infestation treatment and bond on the Townhomes; and (g) all landscaping in the Common Areas.

The Association may be relieved of all or any portion of its maintenance responsibilities to the extent that such property is dedicated to any local, state or federal government or quasi-governmental entity and said entity accepts the responsibility for maintenance. In the event of any such assumption, assignment or dedication, however, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is desirable or necessary to maintain the Community Wide Standards.

In the event that the Association determines that any maintenance which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or the occupant, family, guest, invitee or lessee of an Owner, then the Association may perform such maintenance and all costs thereof may be assessed against the Owner as a specific assessment.

The Board of Directors, in its sole discretion, may leave portions of the Property as undisturbed natural areas and may change the landscaping on the Area of Common Responsibility at any time and from time to time, including the adding or modifying of landscaping improvements, such as the planting of seasonal flowers.

Section 2. Owner Responsibility. Each Owner shall maintain and keep in good repair all exterior portions of the Townhome, including but not limited to roofs, windows, doors, and exterior lighting, and the Limited Use Areas (front stoop, driveway, patio and deck) appurtenant to such Lot, all at the Owner's sole cost and expense and in a manner consistent with the Community-Wide Standards and all governing documents. Owner shall keep the Lot free from all litter, trash and refuse and comply with all governmental health and police regulations. In the event 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 of items for which such Owner is responsible, the Association

shall, except in emergency situations give the Owner written notice of the Association's intent to provide such necessary maintenance at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, or in the event that such maintenance is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions herein, the Association may provide such maintenance and all costs thereof shall be assessed against the Owner as a specific assessment.

Section 3. Party Walls. Each wall built as part of the original construction of the Lots which serves and separates any two adjoining Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions. If a party wall is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall may restore it, and the other Owner who is benefited by the wall shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

#### ARTICLE X. DAMAGE OR DESTRUCTION

In the event of the occurrence of any damage or destruction by fire or other casualty one or more Townhomes, such damage or destruction shall be repaired or rebuilt, as applicable, in all events. All repair, reconstruction or rebuilding of a Townhome shall be substantially in accordance with the plans and specifications for such damages or destroyed Townhome prior to the occurrence of such damage, or in accordance with such differing plans and specifications as are approved for such purpose by the Owner of such Townhome and the Board of Directors. The Owner of such damaged or destroyed Townhome shall be responsible for ensuring that the work of repairing, reconstructing or rebuilding a damaged or destroyed Townhome is completed as soon after the occurrence of such damaged or destruction as is reasonably practicable, at no cost or expense to the Association.

#### ARTICLE XI. INSURANCE

Section 1. Insurance on Common Areas. The Association shall obtain and maintain casualty insurance for all insurable improvements located on the Common Areas which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy with a combined single limit of at least One Million (\$1,000,000.00) Dollars applicable to the Common Areas covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on all persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

Section 2. Individual Insurance. Each Owner, by virtue of taking title to a Lot subject to this Declaration, acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots or the Limited Use Areas. Each Owner covenants and agrees with all other Owners and with the Association that each Owner will maintain at all times all-risk casualty insurance on all portions of the Townhome and the Limited Use Areas appurtenant thereto, as well as a liability policy covering damage or injury occurring on a Lot or Limited Use Area. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of a covered item in the event of damage or destruction from any such hazard.

Upon request by the Board, the Owner shall furnish a copy of such insurance policy or policies to the Association. In the event that any such Owner fails to obtain insurance as required by this section, the Association may purchase such insurance on behalf of the Owner and assess the cost thereof to the Owner, to be collected in the manner provided for collection of assessments herein.

Section 3. Additional Insurance Requirements. The Board of Directors shall utilize reasonable efforts to include the following provisions in the policies that the Association obtains:

- (a) waiver of the insurer's rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners, occupants, and their respective household members;
- (b) until the expiration of thirty (30) days after the insurer gives notice in writing to the Mortgagee of any Lot, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Lot, the other Owners, the Board of Directors, or any of their agents, employees, or household members, nor be canceled for nonpayment of premiums;
- (c) an agreed value endorsement and an inflation guard endorsement.

All policies of insurance shall be written with a company licensed to do business in the State of Georgia and shall carry a "B+" or better rating from A. M. Best Company. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

Nothing contained herein gives any Owner or other party a priority over the rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Lot on which there is a Mortgagee endorsement shall be disbursed jointly to such Lot Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Lot or a Lot and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected Owner's portion of the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Lot separately or to each occurrence, each Lot Owner shall be responsible for paying the deductible pertaining to his or her Lot, if any. If any Owner or Owners fail to pay the deductible when required under this subparagraph, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to the terms of this Declaration.

Additionally, the Association shall obtain such insurance coverage as is necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Property.

## ARTICLE XII. MORTGAGEE PROVISIONS

Section 1. Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot Number, therefore becoming an "eligible holder"), will be entitled to timely written notice of: (a) any condemnation loss of any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

Section 2. Audit. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements of the Association within 90 days of the date of the request.

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

Section 4. HUD/VA Approval. As long as the Declarant has the right to appoint and remove the officers and/or directors of the Association and so long as the project is approved by the U.S. Department of Housing and Urban Development ("HUD") for insuring or the U.S. Department of Veterans Affairs ("VA") for guaranteeing any Mortgage the following actions shall require the prior approval of HUD and/or the VA as applicable: annexation of additional property; dedication of Common Areas to any public entity; merger, consolidation or dissolution of the Association; and material amendment of the Declaration, Bylaws, or Articles of Incorporation.

Section 5. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

#### ARTICLE XIII. AMENDMENT

Except as set forth below, the terms, provisions, covenants and restrictions of this Declaration may be amended only upon the affirmative vote or written consent, or any combination thereof, of 2/3 of the Lot Owners (other than Declarant) and approval of such amendment by the Declarant, so long as the Declarant owns any property for development and/or sale in the community. The approval of any such amendment by the members of the Association shall be given by each such member either casting a vote in favor of such amendment at a meeting of the members of the Association duly called for such purpose, or by such member signing a written approval of such amendment after the date on which such meeting was held. Notwithstanding the foregoing, the Board of Directors, with the written consent of the Declarant, and without the vote of the members, may amend this Declaration for the sole purpose of electing to be governed by the provisions of the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.*

This Declaration may also be amended unilaterally by Declarant if: (a) such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rules or regulation or judicial determination which shall be in conflict therewith, (b) such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots, (c) such amendment is required by an institutional or governmental lender or purchaser of mortgage loans (such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation) to enable such lender or purchaser to make or purchase mortgage loans on the Lots, (d) such amendment is necessary to enable any governmental agency or private insurance company, including but not limited to the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee mortgage loans on the Lots, provided, however, that any such amendment shall not adversely affect the title to any Owner's Lot unless such Lot Owner shall consent thereto in writing, or (e) such amendment does not materially adversely affect the substantive rights of any Owners hereunder nor adversely affect title to any Lot without the consent of the affected Owner.

Any such amendment shall become effective upon the recording with the County Clerk of the instrument evidencing such change unless a later effective date is specified therein. The matters set forth in such instrument shall be presumed to be true and accurate and the amendment which is set forth in such instrument shall be effective, unless it shall be determined by a court of competent jurisdiction that the matters certified to in such instrument are not true and accurate. Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in the Superior Court in the county where the Property is located within one year of the date of recordation of such amendment with the County Clerk.

Every Owner, by taking record title to a Lot, and each holder of a mortgage upon any portion of any Lot, by acceptance of such mortgage, hereby agrees that the terms, provisions, covenants and restrictions of this Declaration may be amended as provided herein.

#### ARTICLE XIV. MISCELLANEOUS

Section 1. Failure of Enforcement. In the event that the Association shall fail to enforce the compliance with any of the provisions of this Declaration by the Owner of any Lot, then the Owner of any other Lot shall have the right to file an action in the Superior Court of the county where the Property is located for an order from such Court requiring that the Association enforce such compliance; provided, however, in no event shall the Board of Directors, or any officer of the Association, or any of their agents, be personally liable to anyone on account of their failure to enforce any of the terms, provisions or restrictions set forth in this Declaration.

Section 2. No Waivers. In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision, or agreement. The acceptance of performance of anything required to be performed with knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

Section 3. Duration. This Declaration, and all of the terms, easements, provisions, liens, charges, restrictions and covenants set forth herein, shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from and after the date this Declaration is recorded, after which time such covenants and restrictions shall be automatically extended for successive periods of twenty (20) years until the recordation of an instrument of termination within two (2) years of the expiration of the initial twenty-year period or any extension thereof, such instrument having been executed by a minimum of fifty-one percent of the record Owners of the Lots.

Section 4. Notices. Any notice required or permitted to be sent to any member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the member or Owner to whom it is intended, at the address which such member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of the Lot owned by such member. The date of service shall be the date of mailing. The address of Declarant or the Association shall be the address of its respective registered agent on file with the Secretary of State of Georgia. The date of service shall be the date shown on the return receipt. Rejection or other refusal to accept shall be deemed to be receipt of the notice sent.

Section 5. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 6. Judicial Proceedings. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Lots, to enforce any liens created by this Declaration. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Lot Owners. This section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including the foreclosure of liens); (b) the collections of assessments; (c) proceeding involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. 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.

Section 7. Successors to Declarant. In no event shall any person or other entity succeeding to the interest of the Declarant by operation of law or through purchase of the Declarant's interest in all or any portion of the Property at foreclosure, sale under power or by deed in lieu of foreclosure, be liable for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of the Declarant.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officers on the day and year set forth below.

Signed, sealed and delivered this  
16<sup>th</sup> day of April, 2007,  
in the presence of:

William J. Brubaker  
Unofficial Witness

Ann Caffery  
Notary Public  
[AFFIX NOTARIAL SEAL]

Venture Homes, Inc.,  
a Georgia corporation

BY: Robert C. White, Sr.  
Robert C. White, Sr., President

[CORPORATE SEAL]



My Commission Expires 2/24/10

EXHIBIT "A"

Legal Description

All that tract or parcel of land lying and being in land Lot 781 and 848 of the 19<sup>th</sup> Land District Districts and 2<sup>nd</sup> Section of Cobb County, Georgia known as "Tract B", as shown According to a plat of survey prepared for Chicago Title Insurance, Tabas, LLLP and Venture Homes, Inc., by Harbuck Land Surveyors, G.R.L.S 3008, dated April 18, 2006 and more particularly described as follows:

Commencing at the intersection of the northwesterly right of way of State Route 5 (a/k/a Austell Road) (112' right of way), and the southerly right of way of Mimosa Drive (variable right of way), thence South 29 degrees 18 minutes 13 seconds West, a distance of 600.73' along the northwesterly right of way of State Route 5 to an iron pin and the TRUE POINT OF BEGINNING; thence continuing along the northwesterly right of way of State Route 5 along an arc of a curve to the right, an arc distance of 50.00 feet (said arc having a radius of 4618.48 feet and being subtended by a chord having a bearing South 29 degrees 18 minutes 13 seconds West a chord length of 50.00 feet) to an iron pin; thence leaving said right of way North 60 degrees 15 minutes 19 seconds West, a distance of 207.48 feet to an iron pin; thence South 31 degrees 20 minutes 22 seconds West, a distance of 286.66 feet to an iron pin; thence South 34 degrees 42 minutes 17 seconds West, a distance of 190.75 feet to an iron pin on the northerly right of way of Reed Circle, thence along the northerly right of way of Reed Circle along an arc of a curve to the left, an arc distance of 55.40 feet (said arc having a radius of 802.48 feet and being subtended by a chord bearing of North 81 degrees 08 minutes 00 seconds West, a chord length of 55.39 feet) to an iron pin; thence leaving said right of way North 34 degrees 47 minutes 17 seconds East, a distance of 235.54 feet to an iron pin; thence North 32 degrees 35 minutes 15 seconds West, a distance of 281.50 feet to an iron pin; thence South 89 degrees 14 minutes 21 seconds West, a distance of 561.13 feet to an iron pin and the west land lot line of Land Lot 781; thence North 00 degrees 18 minutes 44 seconds East, along the west land lot line of Land Lot 781 a distance of 457.71 feet to the southerly right of way of Mimosa Drive; thence South 89 degrees 36 minutes 26 seconds East along the southerly right of way of Mimosa Drive, a distance of 339.23 feet to an iron pin; thence South 00 degrees 02 minutes 22 seconds West, along the southerly right of way of Mimosa Drive a distance of 15.52 feet to an iron pin; thence North 89 degrees 49 minutes 52 seconds East, along the southerly right of way of Mimosa Drive, a distance of 64.44 feet to an iron pin; thence continuing along said right of way along an arc of a curve to the left, an arc distance of 125.99 feet (said arc having a radius of 1519.00 feet and being subtended by a chord giving a bearing of South 87 degrees 26 minutes 26 seconds East, a chord length of 125.95 feet) to an iron pin; thence continuing along said right of way South 89 degrees 50 minutes 06 seconds East, a distance of 226.86 feet to an iron pin, thence continuing along said right of way North 89 degrees 56 minutes 03 seconds East a distance of 347.45 feet to an iron pin; thence leaving the southerly right of way of Mimosa Drive South 14 degrees 49 minutes 26 seconds West, a distance of 146.46 feet to a crimp top pipe; thence South 28 degrees 30 minutes 45 seconds West, a distance of 318.55 feet to an iron pin; thence South 60 degrees 15 minutes 18 seconds East, a distance of 205.70 feet to the TRUE POINT OF BEGINNING.

Said tract contains 11.87 acres.