

**DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS  
FOR NEWPORT SUBDIVISION**

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**DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS  
FOR NEWPORT SUBDIVISION**

THIS DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR NEWPORT SUBDIVISION (hereinafter referred to as this "Declaration") is made as of the 1st day of July, 2004, by New City Development, LLC, a Georgia limited liability company (hereinafter referred to as "Declarant").

**BACKGROUND STATEMENT**

Declarant is the Owner of certain real property in Chatham County, Georgia, which is more particularly described in Exhibit "A" attached hereto and made a part hereof.

Declarant intends to develop on lands, including the real property described in Exhibit "A" attached hereto, a development to be known as Newport (said real property, together with such additional real property as may be subjected to the provisions of this Declaration in accordance with the provisions of Article X hereof is hereinafter referred to as the "Development") Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the property now or hereafter made subject to this Declaration. Declarant also desires to establish a method for the administration, maintenance, preservation, use, and enjoyment of the property that is now or hereafter subjected to this Declaration and certain other properties described in this Declaration.

Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined).

The Declarant hereby declares that all of the real property described in Exhibit "A" attached hereto and made a part hereof shall be held, sold, and conveyed subject to this Declaration, which is for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property (as hereinafter defined). The covenants, restrictions, and easements set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, devisees, successors and assigns and to the benefit of the Association.

## ARTICLE I

### DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings:

- 1.01 Association:** "Association" means Newport Homeowners Association, Inc. (a non-profit, non-stock, membership corporation organized under the Georgia Non-Profit Corporation Code), its successors and assigns.
- 1.02 Board:** "Board" means the Board of Directors of the Association.
- 1.03 By-Laws:** "By-Laws" means the By-Laws of the Association.
- 1.04 Commencement Date:** "Commencement Date" means the date this Declaration is recorded in the Deed Records of Chatham County, Georgia.
- 1.05 Common Property:** "Common Property" means all real and personal property owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.
- 1.06 Declarant:** "Declarant" means New City Development, LLC, a Georgia limited-liability company, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A", or the real property which is intended to become part of the Development, and provided further in the instrument of conveyance to any such successor-in-title or assign, or in a separate instrument recorded in the Deed Records of Chatham County, Georgia, such successor-in-title or assign is designated as the "Declarant" hereunder by the party executing such instrument, which party is the "Declarant" hereunder at the time of the execution of such instrument; provided, further, upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at anyone time.
- 1.07 Development-Wide Standard:** "Development-Wide Standard" means the standard of conduct, maintenance, or other activity generally prevailing in the Development. Such standard may be more specifically determined by the Board and by committees required or permitted to be established pursuant to this Declaration or the By-Laws. Such determination, however, must be consistent with the Development-Wide Standard originally established by the Declarant.
- 1.08 Lot:** "Lot" means any parcel of land shown upon a subdivision plan recorded in the Office of the Clerk of the Superior Court of Chatham County, covering any

portion of the Property, as such boundaries may be modified in accordance with Section 6.04; provided, however, that no portion of the Common Property shall ever be a Lot except as provided in Section 2.03(g) or Section 2.05.

- 1.09 Member:** "Member" means any member of the Association.
- 1.10 Membership:** "Membership" means the collective total of all Members of the Association.
- 1.11 Occupant:** "Occupant" means any person occupying all or any portion of a Residence located within the Development for any period of time, regardless of whether such person is a tenant or the Owner of such property.
- 1.12 Owner:** "Owner" means the record owner (including Declarant), whether one or more persons or entities, of a fee simple title to any Lot; provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.
- 1.13 Parcel:** "Parcel" means and refers to separately designated residential areas comprised of various types of housing initially or by annexation made subject to this Declaration. For example, and by way of illustration and not limitation, a condominium development, a townhouse development, an apartment complex, and a single family detached home subdivision may each be designated as separate Parcels. If separate Parcel status is desired, the Declarant shall designate in an amendment to this Declaration the property that shall constitute a separate Parcel or Parcels. In the absence of specific designation of separate Parcel status, all property made subject to this Declaration shall be considered a part of the same Parcel. The Board may also grant Parcel status to any area if so requested in writing by the Owners holding at least seventy-five (75%) percent of the total vote entitled to vote thereon in such area.
- 1.14 Property:** "Property" means that certain real property described in Exhibit "A" attached hereto, together with such additional real property as may be subjected to the provisions of this Declaration in accordance with the provisions of Article X hereof.
- 1.15 Residence:** "Residence" means a Structure and the Lot on which it is situated which is intended for independent use and occupancy as a residence for a single family. A Structure and the Lot upon which it is situated shall not become a Residence until the Lot and Structure located thereon shall have been conveyed to a party other than the builder thereof or the Structure has been occupied by an Occupant, whichever shall first occur. The Owner of a Residence shall notify the Association or its designee immediately upon the conveyance of the Lot and Structure located thereon to a party other than the builder thereof or the occupancy of the Structure by an Occupant.

**1.16 Restrictions:** "Restrictions" means all covenants, restrictions, easements, charges, liens, and other obligations created or imposed by this Declaration.

**1.17 Structure:** "Structure" means:

- (a) any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, doghouse, coop or cage, covered or uncovered patio, deck, swimming pool, dock, recreational equipment, fence, mailbox, driveway, curbing, paving, wall, tree, shrub, artificial vegetation, statue, flagpole, flag (and other forms of landscaping), sign, signboard, temporary or permanent living quarters (including any house trailer), lighting fixture, or any other temporary or permanent improvement to such Lot;
- (b) any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and
- (c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not Subsection (b) of this Section 1.17 applies to such change.

## **ARTICLE II**

### **COMMON PROPERTY**

**2.01 Conveyance of Common Property:**

- (a) The Declarant, from time to time at no expense to the Association, may convey real and personal property to the Association, and may grant easements to the Association, for the common use and enjoyment of the Owners of Residences (such real and personal property and easements are hereinafter collectively referred to as "Common Property") and, to the extent set forth in this Declaration, the general public. The Association hereby covenants and agrees to accept from the Declarant all such conveyances and grants of Common Property.
- (b) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority, by a deed recorded in the Deed Records of Chatham County, Georgia.

- (c) Lakes, dams, and detention ponds shall, without limitation, be included in the property that may be conveyed by Declarant and which shall be accepted by the Association. Declarant shall not be required to make any improvements whatsoever to the property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any lake or detention pond that may be conveyed.

**2.02 Right of Enjoyment:** Every Owner of a Residence shall have a right and easement to use and enjoy the Common Property as it is constituted from time to time, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners of Residences to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provided in Sections 2.03(f) and 3.05.

**2.03 Rights of the Association:** The rights and privileges conferred in Section 2.02 hereof shall be subject to the right and, where applicable, the obligation of the Association acting through the Board to:

- (a) promulgate rules and regulations relating to the use, operation, and maintenance of the Common Property, including, but not limited to, provisions for the imposition and assessment of fines for violation of any such rules or regulations;
- (b) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the Association's property including Common Property and revenues from assessments, user fees, and other sources; and provided, however, that the Association shall not deed, grant, or convey to anyone any mortgage, deed to secure debt or other security interest on or in Common Property constituting real estate without approval by a two-thirds (2/3) vote of the Members of the Association (excluding the Declarant) and by the Declarant during the period when the Declarant has the right to appoint members of the Board;
- (c) grant easements or rights-of-way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency, or to any utility company, broadband provider, or cable television system;
- (d) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or

authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a two-thirds (2/3) vote of the Members of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

- (e) charge reasonable fees in connection with the admission to and use of facilities or services by Members and non-Members; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;
- (f) suspend, pursuant to Section 3.05, the voting rights of any Member and the rights of enjoyment granted or permitted by Section 2.02;
- (g) modify the boundary lines between Common Property and adjoining Lots or streets;
- (h) sell, lease or otherwise convey all or any part of its properties and interests therein, provided, however, that, except for modifications to the boundary lines between Common Property and adjoining Lots or streets, the Association shall not convey all or any part of the Common Property without the approval by a two-thirds (2/3) vote of the Members of the Association;
- (i) enter into and enforce all applicable provisions of valid agreements of the Association;
- (j) maintain and keep in good repair the Common Property to the extent that such Common Property is not otherwise maintained by the applicable governmental authority; and
- (k) employ, retain, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the Association, the Board, and the officers of the Association.

**2.04 Conveyance of Common Property by Declarant to Association:** The Declarant may transfer or convey to the Association any personal property and any improved or unimproved property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all of its Members.

**2.05 Types of Common Property:** At the time of the conveyance of any real property or grant of any easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or

easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not be used for any different purpose or purposes without the prior written consent of a two-thirds (2/3) vote of the Members of the Association (excluding the Declarant) and of the Declarant during the period when the Declarant has the right to appoint members of the Board.

- 2.06 Delegation of Use:** Any Owner may delegate to the members of his family or his tenants who reside on a Lot, in accordance with the By-Laws, his right to use and enjoy the Common Property.
- 2.07 Maintenance:** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. In addition, the Association shall maintain all landscaping located along or in dedicated rights of way which was installed and maintained by Declarant to the extent permitted by the applicable governmental authority, and shall maintain all entry features, fencing, walls, and irrigation systems, if any, which were installed by Declarant, shall maintain all storm water, storm water management, and detention facilities serving the Development until such facilities are dedicated to and accepted for maintenance purposes by the applicable governmental authority, and such additional items as the Board shall specify from time to time. The foregoing maintenance shall be performed consistent with the Development-Wide Standard.
- 2.08 Other Property:** The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Development, and to enter into easements and agreements to share costs regarding such property where the Board has determined that this would benefit the Owners.

### ARTICLE III

#### NEWPORT HOMEOWNERS ASSOCIATION, INC.

- 3.01 Purpose, Powers, and Duties of the Association:** The Association has been formed as a non-profit civic organization for the sole purpose of performing certain functions for the common good and general welfare of the people of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things, which will promote in some way the common good and general welfare of the people of the Development. To the extent, and only to the extent, necessary to carry out such purpose, and subject to any limitations contained in this Declaration, the Association (a) shall have all of

the powers of a corporation organized under the Georgia Non-Profit Corporation Code and (b) shall have the power and duty to exercise all of the rights, powers, and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

**3.02 Membership in the Association:** Every Owner shall automatically be a Member of the Association and such membership shall terminate only as provided in this declaration. For purposes of voting, there shall be two (2) classes of Members as set forth in Section 3.03.

**3.03 Voting Rights:**

- (a) Each Owner of a Lot, with the exception of Declarant, shall be a Class A Member. Until such time as Declarant relinquishes control, Declarant shall be the sole voting member of the association. At the time when Declarant relinquishes control, each Class A member shall be entitled to one (1) vote per Lot owned by such Owner. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association.
- (b) The Declarant shall be the sole Class B Member. The Class B Membership shall cease and be converted to Class A Membership at such time as Declarant no longer retains the right to appoint and remove members of the Board and officers of the Association pursuant to Section 3.08 below.
- (c) The Development may be composed of Lots to be developed in phases containing unequal numbers of Lots. Each such phase will be platted of record in the Office of the Clerk of the Superior Court of Chatham County. The Declarant shall notify the Association in writing when the final phase of the Development has been so platted of record. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the annexation of additional real property composed of Lots pursuant to Article X of this Declaration, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added and in accordance with the formula set forth in this Section 3.03; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development.
- (d) The Declarant shall be the sole Class B member and at such time as the Declarant is in control of the Association, a quorum shall consist of the presence of the Class B member. At the time when Declarant is no longer in control of the Association and unless otherwise provided in the Declaration, a quorum at any meeting of Members, whether annual or special, shall consist of the presence at such meeting, in person or by proxy, of Members entitled to cast one tenth (1/10) of the votes of the

Membership. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subject meeting shall be one-half (1/2) of the required quorum. Unless otherwise provided in the Articles of Incorporation of the Association, or in the Declaration, or in these By-Laws, a majority of the votes entitled to be cast by all Members present at a meeting shall be necessary and sufficient to decide and act upon any question which shall come before the meeting. No business shall be transacted at any meeting unless a quorum is present.

**3.04 Board of Directors:** The affairs of the Association shall be managed by the Board. The number of directors and the method of election of directors shall be as set forth in the By-Laws of the Association.

**3.05 Suspension of Membership:** The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

- (a) shall be subject to the Right of Abatement, as defined in Section 8.02 by reason of having failed to take reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC (as herein defined) within ten (10) days after having received notice of the same pursuant to the provisions of Sections 5.12, 6.14 or 8.02 hereof;
- (b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof; or
- (c) shall be in violation of any of the rules or regulations of the Association relating to the use, operation, or maintenance of Common Property. Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in Subsection (c) of this Section 3.05, the suspension may be for a period not to exceed sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

**3.06 Termination of Membership:** Membership shall cease only when a person ceases to be an Owner.

**3.07 Voting Procedures:** The procedures for the election of directors of the Association and the resolution of such other issues as may be brought before the Membership of the Association shall be governed by this Declaration, the Georgia Non-Profit Corporation; Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, a copy of which is attached hereto as Exhibit "B", as each shall from time to time be in force and effect.

### **3.08 Control by Declarant:**

- (a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, Declarant hereby retains the right to appoint and remove all members of the Board of the Association, and all officers of the Association until the first of the following events shall occur: (i) the expiration of thirty (30) years after the date of the recording of this Declaration; (ii) the date upon which one hundred (100%) percent of all of the Residences submitted or proposed to be submitted to this Declaration have been conveyed to Owners other than a person or persons constituting Declarant; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant.
- (b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. At such special meeting, the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## **ARTICLE IV**

### **ASSESSMENTS**

#### **4.01 Covenants for Assessments and Creation of Lien and Personal Obligation:**

Each Owner of a Residence, jointly and severally, for himself, his heirs, devisees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

- (a) to pay to the Association the annual assessments, any applicable Parcel assessments, and any specific assessments which may be believed by the Association pursuant to this Declaration against all Residences owned by such Owner;
- (b) to pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the

- Association pursuant to this Declaration against all Residences owned by such Owner;
- (c) that there is hereby created a continuing charge and lien upon all Residences owned by such Owner against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 4.09 hereof and costs of collection including reasonable attorneys' fees;
  - (d) that such continuing charge and lien on such Residence binds such Residence in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns; such charge and lien is superior to any and all charges, liens, and encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) any first mortgage on a Lot or Lots (a "First Mortgage"); such continuing charge and lien shall not be affected by any sale or transfer of a Lot, except that a sale or transfer of a Lot pursuant to a foreclosure of a First Mortgage shall extinguish such continuing charge and lien with respect to amounts owed as of the date of foreclosure;
  - (e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Residence from liability for any assessment thereafter assessed; and
  - (f) that all annual, special, Parcel, and specific assessments (together with interest thereon as provided in Section 4.09 hereof and costs of collection including reasonable attorneys' fees) levied against any Residence owned by such Owner during the period that such Owner is an Owner shall be (in addition to being a continuing charge and lien against such Residence as provided in Section 4.01(c) hereof) a personal obligation which will survive any sale or transfer of the Residence owned by 'such Owner; and that the grantee in a conveyance of a Lot shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee; provided, however, that if the grantee shall obtain a certificate as provided in Section 4.10 hereof, such grantee and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments against such grantor in excess of any amount set forth in the certificate.

**4.02 Purpose of Assessments:** The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the Development, including, but not limited to, security, the acquisition, construction, improvement, maintenance, and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of

operating costs and expenses of the Association, and the payment of all principal and interest when due on all debts owed by the Association.

**4.03 Accumulation of Funds Permitted:** The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the annual assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purpose.

**4.04 Annual Assessment:**

- (a) Beginning on the Commencement Date and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Residence shall be subject to a maximum annual assessment of One Hundred and No/100 (\$100.00) Dollars per year, as may be adjusted after December 31,2004, pursuant to Sections 4.04(b) and (c) below. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Owner pays an annual assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year, and the "First Assessment Year" shall be the year 2004.
- (b) Commencing with the First Assessment Year and continuing thereafter, without a vote of the Membership, the annual assessment may be increased at any time and from time to time during each Assessment Year by a maximum percentage which is equal to the greater of (i) ten (10%) percent, or (ii) the percentage increase, if any, in the Consumer Price Index for all urban consumers (the "CPI") as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the United States, All Items (1982 - 84 = 100) for the monthly period ending on the 31st day of the month of October which immediately precedes each Assessment Year over the CPI for the monthly period ending on the 31st day of the month of October one year earlier. If such Consumer Price Index should cease to be published, the Association shall use the most comparable governmental index published in lieu thereof.
- (c) Commencing with the First Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may, at any time and from time to time, be increased by more than the amount permitted in Section 4.04(b) if such increase is approved (i) by the Declarant, until such time as the Declarant is no longer in control of the association in accordance with section 3.08, or (ii) by a two-thirds (2/3) vote of the Members of the Association.

- (d) In addition to the annual assessment provided in Sections 4.04(a), (b), and (c), above, at the closing of the initial sale of each Residence to a party other than the builder thereof, the purchaser thereof shall pay to the Association \$100.00 as an initial working capital contribution. This contribution is a one-time contribution with respect to each Residence, which is not refundable in the event of a sale or transfer of the Residence.

**4.05 Special and Parcel Assessments:**

- (a) In addition to the annual assessment authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair, or replacement of a capital improvement on the Common Property. Such special assessments may be levied by the Board in any Assessment Year without the approval of the Members, if such special assessments in the aggregate do not exceed an amount equal to the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of a two-thirds (2/3) vote of the Members of the Association.
- (b) The Association shall also be authorized to levy, in any Assessment Year and with such frequency as the Association shall deem necessary, Parcel assessments for the purpose of paying, in whole or in part, the costs of estimated expenses for the sole benefit of a particular Parcel, which Parcel assessments shall be allocated equally among the Residences in a Parcel.

**4.06 Assessment Procedure:**

- (a) The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of the maximum annual assessment as determined by the provisions of this Article IV. The annual assessment shall be due and payable on January 1 of each year (such date is hereinafter referred to as the "Due Date"). At the closing of the initial sale of each Residence to a party other than the builder thereof, the purchaser thereof shall pay to the Association a prorated share of the annual assessment from the closing date to the end of the year. The Board shall also establish an "annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repairs and replacements of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all future repairs and replacements of the Common Property, it being intended that a portion of the costs will be covered by special assessments. The Board shall cause the Association to send to each Owner at least fifteen (15) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on the fifteenth (15th) day following such written notice or the Due Date,

whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in monthly, quarterly, semi-annual installments or annual during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements, which may be levied in accordance with the provisions of this Article IV.

- (b) All Members of the Association shall be given written notice by the Board not less than fifteen (15) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 4.04(c) or Section 4.05 of this Article IV. Such written notice shall specify under which Section or Sections the Board will propose action.

**4.07 Uniform Rate of Assessment:** Both annual and special assessments must be fixed at a uniform rate for all Residences.

**4.08 Contribution by Declarant:** For so long as Declarant has the authority to appoint and remove directors and officer of the Association, Declarant shall not be liable for the payment of any assessments. Provided, however, during said period Declarant shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association, and the sum of annual, special, Parcel, and specific assessments collected by the Association in any Assessment Year, and such advances shall be deemed to be loans to the Association and shall be evidenced by promissory notes from the Association to Declarant, which shall be due and payable upon demand, with interest at the rate often (10%) percent per annum after demand.

**4.09 Effect of Non-Payment of Assessments:** Any assessment which is not paid; on or before the date on which payment is due shall bear interest thereafter at the lower of the highest legal rate of interest which can be charged, or the rate of ten (10%) percent per annum, or such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of anyone or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment on or before the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence) together with a late or delinquency charge not in excess of the greater of Ten (\$10.00) Dollars or ten (10%) percent of the amount of the unpaid portion and interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration

**4.10 Certificate of Payment:** Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written

certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association or its agent may charge a fee not exceeding Ten (\$10.00) Dollars as a prerequisite to the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter herein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

**4.11 Approval by Declarant:** Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the approval of Declarant for so long as Declarant has the right to appoint and remove officers and directors of the Association.

**4.12 Specific Assessments:** The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association, as provided herein.

- (a) expenses of the Association which benefit less than all of the Residences, which may be specifically assessed equitably among all : of the Residences which are benefitted according to the benefit received;
- (b) expenses incurred by the Association pursuant to Section 6.14 hereof;
- (c) reasonable fines as may be imposed in accordance with the terms of this Declaration and the By-Laws; and
- (d) the deductible for any casualty insurance policy carried by the Association, which shall, in the event of damage or destruction, charged to and allocated among the persons who are responsible for maintenance or repair of the damaged or destroyed property.

## ARTICLE V

### ARCHITECTURAL CONTROL

#### **5.01 Architectural Control Committee - Creation and Composition:**

- (a) An Architectural Control Committee (the "ACC") shall be established consisting of not less than three (3) or more than five (5) individuals. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to appoint all members of the ACC until the plans for all of the Residences for all of the Lots in the Development have been approved by the ACC. Thereafter, the Board shall appoint the members of the ACC. All costs of operating the ACC, may, at the discretion of Declarant, be borne by the Association.
- (b) Each initial member of the ACC shall be appointed for a term expiring on December 31, 2004. Thereafter, each member of the ACC shall be appointed for a calendar- year term. If any vacancy shall occur in the membership of the ACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall, subject to the provisions of Section 5.01(a), be filled by the Declarant (or the Board if at the time the Board has the right to appoint members of the ACC) at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC and such resignation shall take effect on receipt thereof by the Chairman. Any member of the ACC may be removed at any time with or without cause by the Declarant while the Declarant has power to appoint members of the ACC pursuant to the provisions of Section 5.01(a) hereof (or by the Board if at the time the Board has the right to appoint members of the ACC).

**5.02 Purpose, Powers, and Duties of the ACC:** The purpose of the ACC is to assure that any installation, construction, or alteration of any Structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction, or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation, and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power to approve or disapprove plans and specifications for any installation, construction, or alteration of any Structure on any Lot.

**5.03 Officers, Subcommittees, and Compensation:** The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time - determine to be necessary. The members of the ACC

shall be reimbursed by the Association for reasonable out-of-pocket costs incurred (other than travel expenses) in the performance of their duties as members of the ACC.

**5.04 Operations of the ACC:**

(a) Meetings: The ACC shall hold meetings as necessary. Special meetings may be called by the Chairman at any time, and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The ACC shall maintain both a record of votes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary of the Association. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ACC.

(b) Activities:

(i) The ACC shall adopt and promulgate the Design Standards described in Section 5.05 hereof and shall, as required, make findings, determinations, rulings, and orders with respect to the

conformity with said Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration.

- (ii) Any two (2) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, except with respect to the adoption or promulgation of the Design Standards. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization, subject, however, to review and modification by the ACC on its own motion or to appeal by the applicant to the ACC as provided in this paragraph (ii). Written notice of the decision of such two (2) or more members shall, within five (5) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no event later than twenty-one (21) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding, but may be appealed to the Board pursuant to Section 5.10 hereof.

**5.05 Design Standards:**

- (a) The ACC shall from time to time adopt, promulgate, amend, revoke, and enforce guidelines (the "Design Standards") for the purposes of:
  - (i) governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;
  - (ii) governing the procedure for such submission of plans and specifications;
  - (iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures, and all other matters that require approval by the ACC pursuant to this Declaration; and

- (iv) assuring the conformity and harmony of external design and general quality of the Development.
- (b) The ACC shall make a published copy of its current Design Standards readily available to Owners and prospective Owners and to all applicants seeking the ACC's approval.

**5.06 Submission of Plans and Specifications:** Except for (i) Structures erected, placed, or moved onto any Lot by the Declarant or any affiliate or designee of the Declarant, and (ii) alterations to such Structures by the Declarant or any affiliate or designee of the Declarant, no Structure shall be commenced, erected, placed, moved onto, or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefore shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC in the Design Standards, including, without being limited to:

- (a) a site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open spaces, easements, and driveways;
- (b) a foundation plan;
- (c) exterior elevations of all proposed Structures and alterations to existing Structures; and
- (d) specifications of materials, color scheme, and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures.

**5.07 Approval of Plans and Specifications:** Upon approval by the ACC of any plans and specifications submitted pursuant to this Declaration, one (1) copy of such plans and specifications, as approved, shall be deposited for permanent record with the ACC, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included' therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure, and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and all conditions attached to any such approval.

**5.08 Disapproval of Plans and Specifications:** The ACC shall have the right in its sole discretion to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following:

- (a) the failure to include information in such plans and specifications as may have been reasonably requested;
- (b) the failure of such plans or specifications to comply with this Declaration or the Design Standards; or
- (c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards for the Development as to set forth in the Design Standards or the Development-Wide Standard, or (ii) as to location to be incompatible with topography, finished ground elevation, or surrounding Structures. In any case in which the ACC shall disapprove any plans or specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

**5.09 Obligation to Act:** The ACC shall take action on any plans and specifications submitted as herein provided within twenty-one (21) days after receipt thereof. Failure by the ACC to take action within twenty-one (21) days after receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

**5.10 Appeal of ACC Decision:** In the event the ACC disapproves any plans and specifications submitted pursuant to this Declaration or grants approval of any plans and specifications subject to any conditions, which are not acceptable to the applicant, the applicant may appeal such decision of the ACC to the Board pursuant to the following procedures:

- (a) Within ten (10) days after receipt of the ACC's decision, the applicant shall give written notice of the applicant's appeal to the Board. The notice shall:
  - (i) Contain a complete copy of the applicant's original application to the ACC and any supplemental material provided to the ACC by the applicant; and
  - (ii) Include a fee (payable to the Association) in the amount of Twenty-Five and No/100 (\$25.00) Dollars.

- (b) Approval by the Board if granted, together with any conditions imposed by the Board, shall be placed in writing on the plans and specifications and shall be returned to the applicant.
- (c) Approval by the Board shall constitute the approval of the ACC for all purposes under this Declaration.
- (d) Failure by the Board to take action within thirty (30) days after receipt of the complete notice of appeal shall be deemed approval of such plans and specifications.

**5.11 Inspection Rights:** Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times, enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration, or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

**5.12 Violations:** If any Structure shall be erected, placed, maintained, or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association, and the Board shall take appropriate measures to correct the violation; the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within ten (10) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

**5.13 Certification of Compliance:**

- (a) Upon completion of the installation, construction, or alteration of any Structure in accordance with plans and specifications approved by the ACC, the ACC shall, upon written request of the Owner thereof or upon the ACC's own initiative, issue a Certificate of Compliance, identifying such Structure and the Lot upon which such Structure is placed, and stating that the plans and specifications have been approved and that such Structure, as built, is acceptable to the ACC. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ACC.

- (b) Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated; and as to any purchaser or lender in good faith and for value, or as to any title insurer, such Certificate shall be conclusive evidence that all Structures on the Lot comply with all of the requirements of this Article; provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency, or approval by the ACC of the actual construction or workmanship of Structures, or to represent or warrant to anyone the quality, function, or operation of the Structures or of any construction, workmanship, engineering, materials, or equipment.

The issuance of the Certificate shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule or regulation or in accordance with every detail on the approved plans and specifications.

- 5.14 Fees:** Subject to the approval of the Board as to the amount, the ACC may impose and collect a reasonable and appropriate fee to cover the cost of review of plans and specifications and of inspections performed pursuant to Section 5.11. The fee shall be established from time to time by the ACC and published in the Design Standards.
- 5.15 Non-Discrimination by ACC:** The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age, or national origin. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age, or national origin.
- 5.16 Disclaimer as to ACC Approval:** Plans and specifications are not reviewed for engineering, structural design, structural integrity, quality of materials, or compliance with any local, state, or federal laws, including local building codes and zoning ordinances, and by approving such plans and specifications neither the ACC, the members thereof, the Board, the Association, nor the Declarant, assumes liability or responsibility thereof, nor for any defect in any Structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these Restrictions, by reason of mistake in judgment, negligence, or non-feasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans and specifications and every Owner agrees that he will not, bring any action or suit against Declarant, the Association, the ACC, the Board, or the officers, directors, members, employees, and agents of any of them, to recover any such damages and hereby releases, remises, quitclaims, and covenants not to sue all such persons and entities for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or non-feasance

and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

## ARTICLE VI

### GENERAL COVENANTS AND RESTRICTIONS

- 6.01 Application:** The covenants and restrictions contained in this Article VI shall pertain and apply to all Lots and to all Structures erected or placed thereon.
- 6.02 Restriction of Use:** Except as provided in Sections 6.03 and 10.03, Lots may be used for single-family residences only and for no other purpose. Except as hereinafter provided, homes constructed on all Lots shall contain a minimum of 1,000 square feet of heated space, excluding garages and carports. Declarant may waive said restriction for any individual Lot in its sole and absolute discretion.
- 6.03 Business Use:** No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant of a Residence may conduct such business activities within the Residence so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Lot; (ii) the business activity conforms to all zoning requirements for the Development; (iii) the business activity is consistent with the residential character of the Development; and (iv) the business activity does not constitute a nuisance or a hazardous or offensive use, as may be determined in the sole discretion of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted, meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Leasing of the Structure on the Lot shall not be considered a business activity violative of this Section.
- 6.04 Resubdivision of Property:** No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division, or subdivision. Notwithstanding the foregoing, nothing herein shall prevent Declarant or the Owners of any Lots from combining all or any portion of two or more Lots into one Lot for construction of a single Residence thereon; provided, that the Owner of the Residence on such Lot shall be responsible for annual, Parcel, specific, and special assessments based upon the number of single-family residences constructed on the combined Lots. Notwithstanding anything contained herein to the contrary, the Declarant reserves the right to re-plat any Lot still owned by the Declarant and shown upon recorded plats of the Development in order to modify the boundary lines and to take such other steps reasonably necessary or desirable to make such re-platted Lot suitable and fit as a building site, including, but not

limited to, the relocation of easements, walkways, rights-of-way, roads, bridges, parks, recreational facilities, and other amenities to conform to the new boundaries of such re-platted Lots; provided, however, that no Lot originally shown on a recorded final plat of the Property shall be reduced to a size more than ten (10%) percent smaller than the smallest Lot shown on such original recorded final plat.

**6.05 Erosion Control:** No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape, and required landscaping as provided for in Section 6.06. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the ACC.

**6.06 Landscaping:** No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. The plans and specifications for the landscaping by the builder of the house on a Lot shall include all trees required by The City of Port Wentworth to be planted in accord with the approved Tree Establishment Plan. No installation or alteration of any landscaping shall take place without the prior written approval of the ACC of plans and specifications therefore. No yard art, including, but not limited to, concrete lawn jockeys, animals, and birdbaths, and plastic animals, shrubs, bushes, and flowers, shall be placed, temporarily or permanently, on the front or side yards of any Lot. Guidelines for the landscaping and mailboxes to accompany the construction or alteration of any Structure may be included in the Design Standards of the ACC. Notwithstanding anything contained herein to the contrary, the Board shall be entitled to establish reasonable rules and regulations limiting the types and extent of holiday decorations and the maximum length of time holiday decorations may be placed outside of houses before and after holidays.

**6.07 Temporary Buildings:** No temporary building, trailer, garage, or building under construction on any Lot shall be used, temporarily or permanently, as a residence except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefore approved by the ACC.

**6.08 Signs and Flags:**

- (a) No signs whatsoever (including, but not limited to, commercial and similar signs) shall, without the ACC's prior written approval of plans and

specifications therefore, be installed, altered, or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

- (i) such signs as may be required by legal proceedings and for display of all building permits;
  - (ii) not more than one "For Sale" sign, such sign having a maximum face area of four square feet; provided that such sign may only be displayed in the front yard of a Lot; and provided, further, that if, at the time of any desired use of such sign, the Association is making "For Sale" signs available for the use of Owners, the signs made available by the Association must be used;
  - (iii) not more than one lot identification sign in accordance with plans and specifications approved by the ACC;
  - (iv) not more than two (2) signs, having no more than one (1) square foot of face area each, indicating that the Structure is protected by a security system;
  - (v) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC; and
  - (vi) signs permitted pursuant to Section 10.03 hereof.
- (b) In no event during approved construction of any Structure shall more than one job identification sign be approved by the ACC.
- (c) No flags whatsoever shall be installed, altered, or maintained on any Lot except for one American Flag no larger than 3 feet by 5 feet on a flagpole attached to the house or garage on the Lot.

**6.09 Setbacks:** In approving plans and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure. Guidelines for setbacks may be included in the Design Standards of the ACC. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

**6.10 Fences and Walls:** No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. No chain-link fences shall be erected or maintained on any Lot except as required by any applicable governmental authority. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the ACC.

**6.11 Roads, Driveways, and Parking Areas:** No road, driveway, or parking area shall be constructed or altered on any Lot without the prior written approval of the ACC of plans and specifications for such roads, driveways, and parking areas.

Guidelines relating to the design and location of roads, driveways, and parking areas may be included in the Design Standards of the ACC.

- 6.12 Television and Radio Antennae:** No exterior antenna, aerial, satellite dish, or other reception device shall be constructed or installed on any Structure located on any Lot, or be placed on or affixed to any other portion of any Lot; provided, however, and notwithstanding the foregoing, the Owner of each Lot shall have the right to install, maintain, and use on such Lot an antenna, aerial, or satellite dish that is designed to receive television broadcast signals and an antenna, aerial, or satellite dish that is no larger than one meter in diameter that is designed to receive direct broadcast satellite service or video programming services via multipoint distribution services, provided that such antenna, aerial, or satellite dish is positioned on that location on the Lot which affords the reception of the best quality signal while being the least visible from any other Lot.
- 6.13 Clotheslines, Equipment, and Woodpiles:** All clotheslines, equipment, woodpiles, and solar equipment shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring Residences and streets, and may be maintained only in the rear yard of a Lot.
- 6.14 Maintenance:** Each Owner shall keep and maintain each Lot and Structure owned by such Owner, as well as all landscaping located thereon, in good condition and repair, including, but not limited to, (i) the repairing and painting (or other appropriate external care) of all Structures, (ii) the seeding, watering and mowing of all lawns, and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. Notwithstanding the foregoing, the maintenance required hereunder shall also extend from the boundary of a Lot to the curb of the street bordering said Lot, and shall exclude areas being maintained by the Association pursuant to Section 2.07 hereof. If, in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within ten (10) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.
- 6.15 Parking and Maintenance of Vehicles:** Vehicles owned or used by Owners or Occupants of a Residence shall be parked only in a garage or on the driveway or parking area serving the Residence, and not on the streets of the Development. All vehicles parked outside of a garage must be properly licensed and in working order, and no vehicle maintenance may be conducted outside Of a garage.

- 6.16 Commercial and Recreational Vehicles and Trailers:** In addition to the restrictions of Section 6.15, no commercial vehicle (other than passenger vehicles having a capacity of less than nine (9) passengers), house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat, boat trailer, open trailer, enclosed trailer, or like equipment shall be permitted on any Lot or within the right-of-way of any street in the Development on a permanent basis, but shall be allowed on a temporary basis not to exceed twenty-four (24) consecutive hours; provided, however, that the Association may waive strict enforcement of this restriction for good cause on a case-by-case basis. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in an enclosed space and is concealed from view from neighboring Residences and streets.
- 6.17 Recreational Equipment:** Recreational and playground equipment shall be placed or installed only upon the rear of a Lot as approved by the ACC. Basketball goals may also be adjacent to the driveway at locations approved by the ACC (or attached to a Residence if approved by the ACC) provided they also satisfy the following requirements:
- (a) basketball backboards must be clear plexiglass or white in color;
  - (b) the goal must be at regulation height (10 feet above the ground); and
  - (c) basketball poles must be black in color.
- 6.18 Non-Discrimination:** No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of, any Lot to any person because of race, color, sex, religion, age, or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.
- 6.19 Animals:** No animals, livestock, or poultry of any kind shall be raised, bred or kept on a Lot, except that not more than two (2) tame domesticated animals may be kept on a Lot. No animals will be allowed, kept, bred, or maintained for any commercial purpose. No more than two (2) cats or dogs, or combination of the two per household will be allowed. Dogs may be kept provided they comply with the following guidelines.
- (a) All dog(s) must either have papers of registration issued by the American Kennel Club, or in the alternative, any type dog is allowed provided the dog weighs no more than forty (40) pounds without a variance. Regardless of the above, no full-blooded or mixed blooded Rottweilers or full-blooded or mixed blooded Pit-bulldogs or other Bulldogs are allowed without a variance.

- (b) Developer may grant a variance for any Lot Owner to have more than two (2) dogs of any size or breed. In addition to any other requirements, Developer may, in Developer's sole discretion, require any dog owner to carry liability insurance before granting a variance for a particular dog.
  
- (c) No dog(s) shall be allowed to exhibit threatening behavior to other domesticated animals or to persons or to injure a person or another domesticated animal. If such action occurs then owner of said dog shall immediately be under the strict requirement to either keep said dog that has caused injury or exhibited threatening behavior inside the Lot Owner's home or to permanently remove said animal from Declarant's Property. All animals must be confined to their owner's Lot (except when accompanied and under the close supervision by animal's owner) and under no circumstances shall said animals be allowed to cause a nuisance. Should a dog bark, growl or make any noise more than one hundred (100) times in a twenty (20) minute period and said noise is caught on audio (hearing) and movie (visible) recording and said noise can be heard more than forty (40) feet from the property line of the lot where the dog is located then this shall constitute a nuisance. Dogs that create any nuisance shall either be required to remain inside Lot Owner's house or said Lot Owner shall be required to permanently remove said dog from Declarant's Property.
  
- (d) Vacant lots shall not be used for animals to "relieve" themselves. Regardless of who may claim ownership or stewardship of the animal, all animal waste shall be the responsibility of the Lot Owner where the animal is living. Lot Owners are responsible to prohibit their animals from "relieving" themselves of any waste anywhere in Declarant's Property other than the Lot Owner's own property and should animals relieve themselves on Lot Owner's lot then said Lot Owner must keep the waste removed from their property so that it does not create undesirable smells, get into the storm water system, or attract insects or other creatures.

Notwithstanding the above, horses might be allowed on a limited basis with a variance from Developer.

In addition to any State or County laws that prohibit cruel treatment of animals, Declarant specifically prohibits any cruel treatment of animals.

**6.20 Solid Waste, Garbage Cans, and Trash Cans:**

- (a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property or within the right-of-way of any street in the Development.

- (b) Except during approved construction, as approved by the appropriate governmental authority, and pursuant to such conditions as shall be specified by the ACC, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property or within the right-of-way of any street in the Development.
- (c) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials, or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standards.
- (d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pickup is to be made in order to provide access to persons making such pickup. At all other times such containers shall be screened or enclosed in a manner set forth in the Design Standards. Guidelines relating to the type of containers permitted, the manner of storage, and the place of pickup may also be included in the Design Standards.

**6.21 Nuisances:** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to anyone in the Development.

## ARTICLE VII

### EASEMENTS, ZONING, AND OTHER RESTRICTIONS

**7.01 Easements:**

- (a) Declarant hereby expressly reserves for the Declarant (for so long as the Declarant owns any Lot within the Development), the Association (after the Declarant no longer owns any Lot within the Development), and the designees, successors, and assigns of each of them, perpetual non-exclusive easements in, on, over, and under any part of the Property for any purpose which Declarant, the Association, or their successors or assigns, as the case may be, deems reasonably necessary for completing or maintaining improvements or effecting repairs within the Development, including, by way of example and not limitation, the following:
  - (i) the erection, installation, construction, and maintenance of wires, lines, conduits, and poles and the necessary or proper attachments

and guy wires in connection with the transmission of electricity, telephone, cable television, and other utilities and similar facilities;

- (ii) the erection, installation, construction, and maintenance of sanitary sewers, drainage systems, public and private sewers, detention ponds, irrigation systems, pipelines for supplying gas and water, and for any other public or quasi-public facility, service, or function;
  - (iii) slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct, or retard drainage flow;
  - (iv) the planting or replanting of hedges, shrubbery, bushes, trees, flowers, and plants of any nature; and
  - (v) the maintenance of all entry features and detention ponds for the Development.
- (b) The holders of the foregoing easements shall not construct or install any of the foregoing systems, facilities, or utilities in, on, over, under, or through any existing Structure used as a residence, and any damage to a Residence resulting from the exercise of any of the foregoing easements shall be promptly repaired by, and at the expense of, the party exercising the easement. The exercise of any of the foregoing easements shall not unreasonably interfere with the use of any Residence, and except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or Occupant of the Lot.

**7.02 Easement Area:** The words "Easement Area" as used herein shall mean those areas on any Lot or any other portion of the Property with respect to which easements are shown or described on a recorded deed, easement agreement, or any filed or recorded map or plat relating thereto, and any area within any Lot which is reasonably necessary to effectuate any of the purposes of any of the foregoing easements.

**7.03 Entry:** The holders of the foregoing easements and their employees, agents, successors, and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Section. The holders of the foregoing easements and their employees, agents, successors, and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area.

**7.04 Easements for Encroachment and Overhang:** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of any Structure constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, an Occupant, or the Association.

**7.05 Zoning and Private Restrictions:** None of the covenants, restrictions, or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules, or regulations of any governmental body. In the event of any conflict between such laws, rules, or regulations and the covenants, restrictions, and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

## **ARTICLE VIII**

### **ENFORCEMENT**

**8.01 Right of Enforcement:** This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association, and (iii) each Owner, and such Owner's heirs, devisees, legal representatives, successors, and assigns and as such shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do thereafter.

**8.02 Right of Abatement:**

- (a) Except where different notice provisions are provided in Sections 5.12 and 6.14, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within ten (10) days after the mailing of said written notice, then the Association shall have the Right of Abatement.
- (b) The Right of Abatement, as used in this Section and in Sections 5.12 and 6.14 hereof, means the right of the Association, through its agents and

employees, to enter at all reasonable times upon any Lot or Structure as to which a violation, breach, or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach, or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the costs thereof including the costs of collection including reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or ten (10%) percent per. annum to be a binding personal obligation of such Owner enforceable at law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens, or encumbrances which may in any manner arise or be imposed upon the Lot after such entry, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof, and (iii) any First Mortgage on a Lot or Lots. Such lien shall not be affected by any sale or transfer of a Lot, except that a sale or transfer of a Lot pursuant to a foreclosure of a First Mortgage shall extinguish such lien with respect to amounts owed as of the date of foreclosure.

**8.03 Specific Performance:** Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association, or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that It may be Impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors, or assigns, by reason of a violation of, or failure to perform, any' of the obligations provided by this Declaration; and, therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

**8.04 Collection of Assessments and Enforcement of Lien:**

- (a) If any assessment, interest, cost, or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner or Owners personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost, or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.
- (b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost, or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its

assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Courthouse in Chatham County, Georgia, to the highest bidder for cash, after advertising the time, terms, and place of such sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriffs advertisements for Chatham County, Georgia, are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and its assigns, the agent and attorney-in-fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or its assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, legal representatives, devisees, successors, and assigns of such Owner, and that the conveyance to be made by the Association or its assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or its assigns shall collect the proceeds of such sale, and after reserving there from the entire amount of assessment, interest, cost, and other charge due, together with all costs and expenses of sale and fifteen (15%) percent of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law and any mortgage of said Lot or Lots, The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

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

**8.05 No Waiver:** The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective heirs, legal representatives, devisees, successors, and assigns, to enforce any Restrictions herein contained shall in no event be

considered a waiver of the right to do so thereafter, as to the same violation or breach, or as to any violation or breach occurring prior or subsequent thereto, or as to the same violation or breach by the Owner of any other Lot.

## ARTICLE IX

### DURATION AND AMENDMENT

- 9.01 Duration:** This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Chatham County, Georgia, after which time this Declaration and the Restrictions contained herein shall be automatically renewed for successive periods of twenty (20) years; provided, however, that after the end of the said twenty (20) year period and during any twenty (20) year renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instrument executed by the proper Association officers and recorded in the Office of the Clerk of the Superior Court of Chatham County, Georgia, or in ~ such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a two- thirds (2/3) vote of the Class A Members of the Association.
- 9.02 Amendments by Declarant:** During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing, filed and recorded in the Deed Records of the Superior Court of Chatham County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Property as it is constituted from time to time, or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 9.02 shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees, if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 9.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance with the provisions of any applicable governmental statute, rule, or regulation, or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots

subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on any Lot subject to this Declaration, or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

**9.03 Amendments by Association:** Amendments to this Declaration, other than those authorized by Section 9.02 hereof, shall be proposed and adopted in the following manner:

- (a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Member of the Association.
- (b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that (i) any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant; and provided, further, however, that any amendment which changes the definition of a Residence, or would require the payment of assessments with respect to a Lot at an earlier date, or which modifies Section 1.15, 10.03, or 13.01, must also be approved by the Declarant until such time as each and every Lot in the Development has become a Residence.
- (c) The agreement of the required percentage of the Owners and, where ~ required, the Declarant, and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President and either Vice President or the Secretary of the Association attached to or Incorporated in the amendment executed by the Association, Which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such a later date as may be specified in the amendment itself.

## ARTICLE X

### ANNEXATION, WITHDRAWAL, AND CONSTRUCTION AND SALE PERIOD

- 10.01 Annexation of Property:** Until January 1, 2011, any additional real property may be annexed to the Property by the Declarant without the consent of the Class A Members. Such annexation shall be accomplished by filing in the Office of the Clerk of the Superior Court of Chatham County an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration; or by filing an amendment to this Declaration which shall be executed by the Declarant and has been consented to by the owners of the real property to be annexed if any portion of such real property is owned by someone other than Declarant. After December 31, 2010, no real property may be annexed to the Property unless such annexation is approved by a two-thirds (2/3) vote of the Members of the Association.
- 10.02 Withdrawal of Property:** For so long as Declarant has authority to appoint and remove directors and officers of the Association, Declarant, without the consent of the Class A Members, shall have the right to withdraw portions of the Property from the provisions of this Declaration if the withdrawn property has been subjected to the provisions of this Declaration in error, or if the withdrawal is required by any changes in the plan for the Development. Such withdrawal shall be accomplished by filing in the Office of the Clerk of the Superior Court of Chatham County, an amendment to this Declaration which shall be executed by the Declarant and has been consented to by the Owners of the real property to be withdrawn if any portion of said real property is owned by someone other than Declarant.
- 10.03 Construction and Sale Period:** Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, Design Standards, or any amendments thereto, Residences have been completed on all Lots which have been made subject to this Declaration, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Development as Declarant may deem necessary, such facilities and activities as may reasonably be required by the Declarant and such builder in the development, construction, and sales activities related to property subject or which may be made subject to this Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on, or in the Development; the right to tie into any portion of the Development with driveways, parking areas, and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, cable television, water, sewer and drainage lines and facilities constructed or installed in, on, under, and/or over the Development; the right to carry on sales and promotional activities in the Development; the right

to maintain sales signs and project signs on individual Lots, within the right-of-way of any road, and at the entrance(s) to the Development; and the right to construct and operate business offices, signs, construction trailers, material storage areas, model residences, off- street parking areas, and sales offices. Declarant and any such builder or developer may use residences or offices owned or leased by Declarant or such builder or developer as model residences and sales offices. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person causing any damage at its sole expense.

## ARTICLE XI

### MISCELLANEOUS

- 11.01 No Reverter:** No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.
- 11.02 Severability:** A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.
- 11.03 Headings:** The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.
- 11.04 Gender:** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.
- 11.05 Notices:** All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consents of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the ACC, an Owner, or any other person, shall be in writing. Except where different or additional notice provisions are provided in this Declaration, all such writings shall be sufficient if personally delivered or if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

Declarant: c/o Mr. Fred Williams  
New City Development, L.L.C  
2680 Quacco Road  
Pooler, Georgia 31322

Owners: Each Owner's address as registered with the Association in accordance with the By-Laws or if no such address has been registered, at the Owner's last-known address.

The Declarant reserves the right to change its address from time to time by filing an amendment to this Declaration specifying its new address in the Deed Records of Chatham County, Georgia.

Any written communication mailed in accordance with this Section 11.05 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

**11.06 No Liability:** Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration or any provision herein is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability. In addition, neither the Declarant nor the Association shall have any liability of any kind as a result of any failure to enforce any provision contained in this Declaration, the By-Laws, the rules and regulations adopted by the Association, or the Design Standards.

**11.07 Association Insurance:**

(a) If required by applicable law, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief, and extended coverage insurance in an amount, subject to reasonable deductibles, adequate to cover the cost of replacement of such improvements in the event of loss of any and/or all of such improvements, fixtures, and contents thereof, and (ii) comprehensive general liability, insurance covering all of the Common Property, including, without limitation, the operation, maintenance, or use thereof, and improvements and facilities thereon, for at least One Million Dollars (\$1,000,000.00) for bodily injury, including death and property damage, arising out of a single occurrence. Each such policy of insurance shall require that the certificate holders and insured be given thirty (30) days' prior written notice of any cancellation of such policies.

(b) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the

property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five (75%) percent of the total Association vote entitled to vote thereon and, so long as the Declarant has the right to appoint and remove directors, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available, provided, however, such extension shall not exceed one hundred and twenty (120) days.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Development in a neat and attractive condition until the Association establishes another use for said property.

- (c) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be charged to and allocated among the persons who are responsible hereunder for maintenance or repair of the damaged or destroyed property.
- (d) In addition to the coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as may be required from time to time by either the Veterans Administration or the Federal Housing Administration, their successors and assigns, for similar type residential subdivision communities.
- (e) All insurance coverage required by the Association shall be written in the name of the Association as trustee for the benefit of the Association, the Owners and each such Owner's mortgagee. The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

- (i) a waiver of subrogation by the insurer as to any claims against the Board, its manager, the Owners, and their respective tenants, servants, agents, and guests;
- (ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
- (iii) that no policy may be reduced in amount, cancelled, subjected to non-renewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Board to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Board, its manager, any Owner or Mortgagee;
- (iv) that any "other insurance" clause in any policy excludes individual Owners' policies from consideration; and
- (v) in no event shall the insurance coverage obtained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their mortgagees, and the insurance carried by the Association shall be primary.

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance if and to the extent necessary to satisfy the requirements of applicable law.

- (f) The Association shall obtain and maintain directors' and officers' liability insurance for all directors and officers of the Association and a blanket fidelity bond for all officers, directors, and employees of the Association and all other persons who handle, or are responsible for, funds of or administered by the Association. If the Association engages a management agent who has responsibility for handling or administering funds of the Association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees, and agents handling or administering the funds of the Association. Such fidelity bonds shall name the Association as an obliged and shall not be less than the estimated maximum, including reserve funds, the custody of the management agent at any time during the period of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Lots plus reserve funds. The bonds shall contain waivers by the issuer of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior notice to the Association.

**11.08 Variances:** Notwithstanding anything to the contrary contained herein, the Declarant or the Board or the designee of either of them shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws, any rule, regulation, or use restriction adopted by the Association, and the Design Standards adopted by the Architectural Control Committee if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Development.

**11.09 Grievances:** In the event any Owner intends to commence a legal action against the Declarant or the Association, or any of their officers, directors, employees, or agents, for any matter related to this Declaration, the Association, the Architectural Control Committee, the Design Standards adopted by the Architectural Control Committee, or the Common Property, as a condition precedent to the bringing of such action, such Owner must make a good faith effort to meet with the Declarant or the Association, as the case may be, in person at which time such Owner shall state his or her grievance and in good faith give the Declarant or the Association an opportunity to respond.

## **ARTICLE XII**

### **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of first mortgages on Residences in the Development. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained herein or therein.

**12.01 Special Mortgagee Provisions:**

- (a) As used in this Section 12.01, the term "Eligible Holder" shall mean a holder, insurer, or guarantor of a first mortgage on a Lot which has requested notice in accordance with the provisions of Section 12.01(b).
- (b) A holder, insurer, or guarantor of a first mortgage, upon written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number), will be entitled to timely written notice of:
  - (i) any proposed amendment of the Declaration effecting a change in (A) the boundaries of any Lot or the exclusive easement rights appertaining thereto; (B) the interests in the Common Property or the liability for common expenses appertaining thereto; (C) the number of votes in the Association appertaining to any Lot; or (D) the purposes to which any Lot or the Common Property are restricted;

- (ii) any proposed termination of the administration of the Common Property pursuant to this Declaration;
  - (iii) any condemnation loss or 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;
  - (iv) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first mortgage held by such Eligible Holder which remains uncured for a period of sixty (60) days;
  - (v) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
  - (vi) any proposed action which would require the consent of a specified percentage of Eligible Holders, as specified herein; and
  - (vii) an annual financial statement, or audit if available, of the Association for the immediately preceding fiscal year, free of charge.
- (c) To the extent permissible under the law of the State of Georgia, the following provisions shall apply:
- (i) Any restoration or repair of the Common Property after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of the Eligible Holders of first mortgages on Lots to which at least fifty-one (51 %) percent of the votes of Lots subject to mortgages held by such Eligible Holders are allocated, is obtained.
  - (ii) Any election to terminate the administration of the Common Property, pursuant to this Declaration after substantial destruction or a substantial taking in condemnation of the Property must require the approval of the Eligible Holders of first mortgages on Lots to which at least fifty-one (51%) percent of the votes of Lots subject to mortgages held by such Eligible Holders are allocated.
- (d) The following provisions do not apply to amendments to the constituent documents or termination of the Association pursuant to Section 12.01(c) hereof made as a result of destruction, damage, or condemnation, or to the addition of land pursuant to any plan of expansion or phased development previously approved by the Department of Housing and Urban Development ("H.U.D.") or the Veterans Administration ("V.A.") to the extent such approval is required by H.U.D. or the V.A.:

- (i) The consent of Owners representing at least sixty-seven. (67%) percent of the Class II A" votes and of the Declarant, so long as It holds any land subject to this Declaration, and the approval of the Eligible Holders of first mortgages on Lots to which at least sixty-seven (67%) percent of the votes of Lots subject to a mortgage appertain, shall be required to terminate the administration of the Property subject to this Declaration.
  
- (ii) The consent of Owners representing at least sixty-seven (67%) percent of the Class "A" votes and of the Declarant, so long as it holds any land subject to this Declaration, and the approval of Eligible . Holders of first mortgages on Lots to which at least fifty-one (51 %) percent of the votes of Lots subject to a mortgage appertain, shall be required to materially amend any provisions of this Declaration, the By-Laws or the Articles of Incorporation to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:
  - (A) Voting;
  - (B) Assessments, assessment liens, or subordination of such liens;
  - (C) Reserves for maintenance, repair, and replacement of the Common Property
  - (D) Insurance or fidelity bonds;
  - (E) Rights to use of the Common Property;
  - (F) Responsibility for maintenance and repair of the several portions of the Property;
  - (G) Expansion or contraction of the Property or the addition, annexation, or withdrawal of land to or from the Property;
  - (H) Boundaries of any Lot;
  - (I) Convertibility of Lots into Common Property or of Common Property into Lots;
  - (J) Leasing of Lots;
  - (K) Imposition of any right of first refusal or similar restriction on the right of a Lot' Owner to sell, transfer, or otherwise convey his or her Lot

- (L) Establishment of self-management by the Association where professional management, if any, has been employed; and
  - (M) The approval of Eligible Holders of first mortgages on Lots to which at least fifty-one (51 %) percent of the votes of Lots subject to a mortgage appertain, shall be required to amend any provisions included in this Declaration, the By-Laws or the Articles of Incorporation which are for the express benefit of holders or insurers of first mortgages on Lots.
- (e) The provisions of this Section 12.01 shall not be construed to reduce the percentage vote that must be obtained from mortgagees of Lot Owners where a larger percentage vote is otherwise required by applicable law or in any other provision in this Declaration, the By-Laws, or the Articles of Incorporation for any of the actions contained in this Section 12.01.

**12.02 Special FHLMC Provision:** So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two thirds (2/3) of the first mortgagees or at least two thirds (2/3) T of the total Members of the Association entitled to vote thereon consent, the Association shall not:

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

First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which mayor have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty

insurance coverage upon the lapse of an Association policy, and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

- 12.03 No Priority:** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgage of any Residence in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.
- 12.04 Notice to Association:** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such a residence.
- 12.05 Amendment by Board:** Should the Department of Housing and Urban Development ("H.U.D."), the Veterans Administration ("V.A."), the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.
- 12.06 V.A. and H.U.D.:** As long as there is a Class B membership, the following actions shall require the prior approval of the V.A. so long as the V.A. is guaranteeing any mortgage in the Property and the prior approval of H.U.D. so long as H.U.D. is insuring any mortgage in the Property: Annexation of additional land to the Property, except for annexation by Declarant in accordance with Article X pursuant to a plan of annexation previously approved by the V.A. or H.U.D.; dedication of Common Property to any public entity; and material amendment of the Declaration, By-Laws, or Articles of Incorporation.
- 12.07 Applicability of Article XII:** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the By-Laws, or Georgia law for any of the acts set out in this Article.
- 12.08 Failure of Mortgagee to Respond:** Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the mortgagee within thirty (30) days of the date of the Association's request.

## ARTICLE XIII

### GEORGIA PROPERTY OWNERS' ASSOCIATION ACT

- 13.01 Applicability of Article XIII:** The provisions of this Article XIII shall be of no force or effect until the first of the following events shall occur: (i) the expiration of twenty (20) years after the date of recording of this Declaration; (ii) the date upon which one hundred (100%) percent of all Residences submitted or proposed to be submitted to this Declaration have been conveyed to Owners other than a person or persons constituting Declarant; or (iii) the recording of an Amendment to this Declaration executed by Declarant expressly stating that this Article shall be effective.
- 13.02 Submission to Act:** From and after the date this Article XIII shall become effective pursuant to the provisions of Section 13.01 of this Declaration, the Property, the Association, all Lots in the Development, and all Owners and Mortgagees shall be subject to the provisions of the Georgia Property Owners' Association Act, Official Code of Georgia Annotated Sec. 44-3-220, as now or hereafter amended (hereinafter referred to as the "Act"). Thereafter, the Association and all Owners and Mortgagees shall be entitled to the benefits, and subject to the provisions, of the Act.
- 13.03 Conflicts:** From and after the date this Article XIII shall become effective pursuant to the provisions of Section 13.01 of this Declaration, in the event of any conflicts between the Act, or any of the provisions of this Declaration, the Articles of Incorporation of the Association, or the By-Laws of the Association, the provisions of the Act shall govern and control.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed as of the day and year first above written.

Signed, sealed, and delivered  
in the presence of:

NEW CITY DEVELOPMENT, LLC.

\_\_\_\_\_  
Unofficial Witness

BY: \_\_\_\_\_  
RANDE DUKE, Manager

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

Notarial Execution Date: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

The Association, by the execution hereof, acknowledges and agrees that the Association is hereby bound by all of the Association's obligations under this Declaration.

IN WITNESS WHEREOF, the Association, acting through its duly authorized Officer, has caused this Declaration to be executed and sealed as of the day and year first above written.

Signed, sealed, and delivered  
in the presence of:

NEWPORT HOMEOWNERS  
ASSOCIATION, INC.

\_\_\_\_\_  
Unofficial Witness

BY: \_\_\_\_\_  
RANDE DUKE, Manager

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

Notarial Execution Date: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## **EXHIBIT "A"**

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in the 8th Georgia Militia District of Port Wentworth, Chatham County, Georgia, and being Lots 1 through 163 of Newport - Phase 1, as per plat prepared by Coastal Surveying Co., Inc (Vincent Helmly, Georgia Registered Land Surveyor No. 1882), recorded in Plat Book 30S, Pages 96A through 96F Chatham County, Georgia records, which plat is hereby referred to and made a part hereof.