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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
CHATTAHOOCHEE BLUFFS

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THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS  
ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS  
OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET*  
*SEQ.*

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

FOR

CHATTAHOOCHEE BLUFFS

- TABLE OF CONTENTS -

	<u>Page Number</u>
<b>ARTICLE 1 <u>DEFINITIONS</u></b> .....	<b>1</b>
1.1 " <u>APPROVED BUILDER</u> ".....	1
1.2 " <u>ARTICLES OF INCORPORATION</u> ".....	2
1.3 " <u>ASSOCIATION</u> ".....	2
1.4 " <u>BOARD OF DIRECTORS</u> " OR " <u>BOARD</u> ".....	2
1.5 " <u>BYLAWS</u> ".....	2
1.6 " <u>COMMON PROPERTY</u> ".....	2
1.7 " <u>COMMUNITY</u> ".....	2
1.8 " <u>DECLARANT</u> ".....	2
1.9 " <u>MORTGAGE</u> ".....	2
1.10 " <u>MORTGAGEE</u> ".....	2
1.11 " <u>OCCUPANT</u> ".....	2
1.12 " <u>OWNER</u> ".....	2
1.13 " <u>PERSON</u> ".....	3
1.14 " <u>SUPPLEMENTARY DECLARATION</u> ".....	3
1.15 " <u>TOTAL ASSOCIATION VOTE</u> ".....	3
1.16 " <u>UNIT</u> ".....	3
<b>ARTICLE 2 <u>PROPERTY SUBJECT TO THIS DECLARATION</u></b> .....	<b>3</b>
2.1 <u>PROPERTY HEREBY SUBJECTED TO THIS DECLARATION</u> .....	3
2.2 <u>UNILATERAL ANNEXATION BY DECLARANT</u> .....	3
<b>ARTICLE 3 <u>ASSOCIATION MEMBERSHIP AND VOTING RIGHTS</u></b> .....	<b>4</b>
3.1 <u>MEMBERSHIP</u> .....	4
3.2 <u>VOTING</u> .....	4
3.3 <u>NOTICE OF SALE OR ACQUISITION</u> .....	4
<b>ARTICLE 4 <u>ASSESSMENTS</u></b> .....	<b>5</b>
4.1 <u>PURPOSE OF ASSESSMENTS</u> .....	5
4.2 <u>CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS</u> .....	5
4.3 <u>GENERAL ASSESSMENTS</u> .....	5
4.4 <u>SPECIAL ASSESSMENTS</u> .....	6
4.5 <u>SPECIFIC ASSESSMENTS</u> .....	6
4.6 <u>SUBORDINATION OF LIENS TO MORTGAGES</u> .....	6
4.7 <u>REMEDIES OF THE ASSOCIATION</u> .....	7
4.8 <u>DATE OF COMMENCEMENT OF ASSESSMENTS</u> .....	7
4.9 <u>BUDGET DEFICITS DURING DECLARANT CONTROL</u> .....	8
4.10 <u>FAILURE TO ASSESS</u> .....	8
4.11 <u>ESTOPPEL LETTER</u> .....	8
4.12 <u>INITIATION FEE</u> .....	8

**ARTICLE 5 MAINTENANCE; COMMON PROPERTY ..... 8**

5.1 ASSOCIATION'S MAINTENANCE RESPONSIBILITY ..... 8

5.2 OWNER'S MAINTENANCE RESPONSIBILITY ..... 9

5.3 PARTY WALLS ..... 10

5.4 UNIT MAINTENANCE ..... 10

5.5 CONVEYANCE OF COMMON PROPERTY BY DECLARANT TO ASSOCIATION; NO IMPLIED RIGHTS ..... 10

5.5 CONVEYANCE OF COMMON PROPERTY BY DECLARANT TO PRIVATE OR GOVERNMENTAL ENTITY ..... 11

5.7 PARTITION ..... 11

5.8 CONDEMNATION ..... 12

5.9 LIABILITY ..... 12

5.10 MEASURES RELATED TO INSURANCE COVERAGE ..... 12

5.11 GATED COMMUNITY ..... 12

**ARTICLE 6 ARCHITECTURAL STANDARDS ..... 14**

6.1 GENERAL ..... 14

6.2 GUIDELINES AND PROCEDURES ..... 14

6.3 LIMITATION OF LIABILITY ..... 14

6.4 NO WAIVER ..... 15

6.5 VARIANCES ..... 15

6.6 ENFORCEMENT ..... 15

6.7 ARCHITECTURAL REVIEW COMMITTEE ..... 16

**ARTICLE 7 USE RESTRICTIONS AND RULES ..... 16**

7.1 RULES AND REGULATIONS ..... 16

7.2 RESIDENTIAL USE ..... 16

7.3 SIGNS ..... 17

7.4 VEHICLES; PARKING ..... 17

7.5 ANIMALS AND PETS ..... 18

7.6 NUISANCE ..... 18

7.7 UNSIGHTLY OR UNKEMPT CONDITIONS ..... 18

7.8 ANTENNAE ..... 18

7.9 GUNS ..... 19

7.10 FENCES ..... 19

7.11 AIR-CONDITIONING UNITS ..... 19

7.12 LIGHTING ..... 19

7.13 ARTIFICIAL VEGETATION ..... 19

7.14 FLAGS ..... 19

7.15 ENERGY CONSERVATION EQUIPMENT ..... 19

7.16 CLOTHESLINES ..... 19

7.17 YARDS ..... 19

7.18 WINDOW TREATMENTS ..... 20

7.19 STORM AND SCREEN DOORS AND WINDOWS ..... 20

7.20 DRAINAGE ..... 20

7.21 GARBAGE CANS, FIREWOOD, ETC. ..... 20

7.22 SUBDIVISION OF UNIT ..... 20

7.23 HEATING OF UNITS IN COLDER MONTHS ..... 20

7.24 GARAGE SALES ..... 21

7.25 TRAFFIC REGULATIONS ..... 21

7.26 OPEN SPACE CONSERVATION AREA ..... 21

**ARTICLE 8 RESTRICTION ON LEASING ..... 21**

8.1 LEASING ..... 21

8.2 DEFINITIONS ..... 22

8.3 GENERAL ..... 22

8.4 UNDUE HARDSHIP ..... 23

8.5 LEASING PROVISIONS..... 23

8.6 MORTGAGEE EXEMPTION ..... 25

**ARTICLE 9 INSURANCE AND CASUALTY LOSSES** ..... 25

9.1 INSURANCE..... 25

9.2 DAMAGE AND DESTRUCTION ..... 26

9.3 INSURANCE DEDUCTIBLE..... 27

**ARTICLE 10 MORTGAGEE PROVISIONS**..... 27

10.1 NOTICES OF ACTION ..... 27

10.2 AUDIT..... 27

10.3 NO PRIORITY ..... 27

**ARTICLE 11 EASEMENTS**..... 27

11.1 GENERAL..... 27

11.2 EASEMENTS FOR USE AND ENJOYMENT..... 28

11.3 EASEMENTS FOR ENCROACHMENT AND OVERHANG..... 29

11.4 EASEMENT FOR UTILITIES - ASSOCIATION AND DECLARANT..... 29

11.5 EASEMENT FOR UTILITIES - UNIT OWNER ..... 29

11.6 EASEMENT FOR EMERGENCY ENTRY ..... 30

11.7 EASEMENT FOR ASSOCIATION MAINTENANCE ..... 30

11.8 EASEMENT FOR UNIT MAINTENANCE..... 30

11.9 EASEMENT FOR DRAINAGE ..... 30

11.10 EASEMENT DURING CONSTRUCTION AND SALE PERIOD ..... 30

11.11 EASEMENT FOR PRIVATE STREETS, SIDEWALKS AND SIGNS..... 31

**ARTICLE 12 GENERAL PROVISIONS**..... 32

12.1 ENFORCEMENT ..... 32

12.2 DURATION ..... 32

12.3 OCCUPANTS BOUND ..... 32

12.4 SELF-HELP..... 32

12.5 TERMINATION OF RIGHTS OF DECLARANT AND APPROVED BUILDER..... 33

12.6 AMENDMENT ..... 33

12.7 GENDER AND GRAMMAR..... 34

12.8 SEVERABILITY ..... 34

12.9 CAPTIONS ..... 34

12.10 NO MERGER..... 34

12.11 PREPARER ..... 34

12.12 NOTICES..... 34

12.13 PERPETUITIES ..... 34

12.14 NO DISCRIMINATION ..... 35

12.15 SECURITY..... 35

12.16 INDEMNIFICATION ..... 35

12.17 AGREEMENTS..... 35

12.18 VARIANCES ..... 36

12.19 LITIGATION..... 36

EXHIBIT "A" - PROPERTY DESCRIPTION

EXHIBIT "B" - ADDITIONAL PROPERTY WHICH MAY BE UNILATERALLY SUBMITTED TO THIS DECLARATION BY DECLARANT

EXHIBIT "C" - BYLAWS OF CHATTAHOOCHEE BLUFFS COMMUNITY ASSOCIATION, INC.

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

FOR

CHATTAHOOCHEE BLUFFS

THIS DECLARATION is made on the date hereinafter set forth by **AKERS MILL (U.S.) LIMITED PARTNERSHIP, LLLP**, a Georgia limited liability limited partnership (hereinafter sometimes called "Declarant");

W I T N E S S E T H

WHEREAS, Declarant and the Approved Builder are the owners of the real property described in Exhibit "A" hereof; and

WHEREAS, Declarant and the Approved Builder desire to subject the real property described in Exhibit "A" hereof to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant and the Approved Builder hereby declare that the real property described in Exhibit "A" attached hereto and by this reference incorporated herein is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, mortgaged and otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens, hereinafter set forth, which are for protecting the value and desirability of and which shall run with the title to, the real property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of the real property now and hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each owner of all or any portion thereof.

Article 1  
Definitions

The following words when used in this Declaration or in any Supplementary Declaration shall have the following meanings:

1.1 "Approved Builder" means Ashton Atlanta Residential, L.L.C., a Georgia limited liability company and any other entity that may be designated as an Approved Builder hereunder by the Declarant, by way of a recorded Supplementary Declaration.

1.2 "Articles of Incorporation" means the Articles of Incorporation of Chattahoochee Bluffs Community Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.3 "Association" means Chattahoochee Bluffs Community Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

1.4 "Board of Directors" or "Board" means the appointed or elected body of the Association, vested with the authority to manage the affairs of the Association under the Georgia Nonprofit Corporation Code, O.C.G.A. § 14-3-101 *et seq.*

1.5 "Bylaws" means the Bylaws of Chattahoochee Bluffs Community Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference as may be amended from time to time.

1.6 "Common Property" means any and all real and personal property, and the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.7 "Community" refers to that certain real property described in Exhibit "A", attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein.

1.8 "Declarant" means **AKERS MILL (U.S.) LIMITED PARTNERSHIP**, a Georgia limited liability limited partnership and its successors-in-title and assigns; provided that in a recorded instrument, such successor-in-title or assignee is designated as the Declarant hereunder by the then holder of all of the rights of Declarant hereunder; and, provided, further, upon the effective date of the designation of a successor Declarant, all rights of the former Declarant in and to such status as Declarant hereunder shall cease, it being understood that there shall be only one holder of the rights of Declarant hereunder at any one point in time.

1.9 "Mortgage" means any and all instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt or deed of trust.

1.10 "Mortgagee" means the holder of a Mortgage.

1.11 "Occupant" means any Person occupying all or any portion of a Unit or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.12 "Owner" means the record owner, whether one or more Persons, of the fee simple title to any Unit located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

1.13 "Person" includes any individual, individual acting in a fiduciary capacity, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company or other organization, recognized as a separate legal entity under Georgia law.

1.14 "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.

1.15 "Total Association Vote" means the votes attributable to the entire membership of the Association (including votes of Declarant) as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast.

1.16 "Unit" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site, as shown on the subdivision plat(s) for the Community, recorded in the land records of Cobb County, Georgia. Each Unit is attached by party wall(s) to one or more other Units so that the boundary between Units is a line running along the center of the party wall separating the Units. The ownership of each Unit shall include the exclusive right to use and possession of any and all portions of the heating and air conditioning units which are appurtenant to and serve each Unit (including, but not limited to, compressors, conduits, wires and pipes) and any porch, deck, patio, steps, wall, roof, foundation, sunroom or any similar appurtenance as may be attached to a Unit when such Unit is initially constructed. The ownership of each Unit shall include, and there shall automatically pass with the title to each Unit as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interest of an Owner in the Common Property, as herein provided.

## Article 2

### Property Subject To This Declaration

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

2.2 Unilateral Annexation By Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "B" attached hereto and by this reference incorporated herein, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected. Declarant intends to annex

hereto the property contained in Declarant's land plan for the development as amended from time to time which property is a portion of the property described in Exhibit "B". However, inclusion of property on Declarant's land plan or in Exhibit "B" shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land plan bar Declarant from subjecting such property to the Declaration. Any annexation shall be effective upon the filing for record of a Supplementary Declaration unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

### Article 3

#### Association Membership and Voting Rights

3.1 Membership. Every Person who is the record owner of a fee or undivided fee interest in any Unit that is subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Unit. Membership shall be appurtenant to and may not be separated from ownership of a Unit. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the spouse of a member, but in no event shall more than one (1) Person representing a single membership hold office at the same time. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this Section shall restrict the number of votes cast or the number of the officers and directors appointed by the Declarant.

3.2 Voting. Members shall be entitled to one vote for each Unit owned. When more than one Person holds an ownership interest in a Unit, the vote for such Unit shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or referendum. The vote attributable to a Unit shall be suspended in the event more than one Person seeks to exercise it. The Board of Directors may suspend the voting rights of an Owner for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations.

3.3 Notice of Sale or Acquisition. Owners must keep the Association apprised of their name, address and telephone number. Accordingly, prior to the sale of a Unit, the Owner shall provide the Association with written notice of the name of the purchaser and the date, time and place of the closing. Upon acquisition of a Unit, each new Owner shall provide the Association with written notice of the name, mailing address and telephone number of the Owner and the



names of the Occupants of the Unit. All Owners shall notify the Association of any change in name, address or telephone number.

Article 4  
Assessments

4.1 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Units, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) special assessments; and (c) specific assessments. All such assessments, together with late charges, interest (at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18 %) per annum on the principal amount due) and costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and shall be a continuing lien in favor of the Association on the Unit against which each assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Unit at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Unit, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Unit. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

4.3 General Assessments. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. The Board shall cause the budget and the assessments to be levied against each Unit for the year to be delivered to each member at least thirty (30) days prior to the due date of any general assessment. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and the Declarant. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as

provided herein, the budget in effect shall continue. General assessments shall be levied equally on all similarly situated Units and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the assessment shall be paid semi-annually. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities (including all water supplied to the Community), cleaning and janitor services, Community trash collection as provided in Section 7.22 hereof, landscape maintenance, expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others.

4.4 Special Assessments. The Association may levy a special assessment if approved by two-thirds (2/3) of the Total Association Vote and the Declarant; provided, however, in the event the total amount of special assessments allocable to each Unit does not exceed Three Hundred Dollars (\$300.00) in any one fiscal year, the Board may unilaterally impose the special assessment without the need for a vote of the Members. Special assessments shall be paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.5 Specific Assessments. The Board shall have the power to levy specific assessments 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 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. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Units may be specifically assessed equitably among all of the Units which are benefited according to the benefit received; and (b) expenses of the Association which benefit all Units, but which do not provide an equal benefit to all Units, may be assessed equitably among all Units according to the benefit received.

4.6 Subordination of Liens to Mortgages. The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage placed on a Unit if, but only if, all assessments and charges with respect to such Unit authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the Unit pursuant to any proceeding in lieu of foreclosure or the sale of transfer of the Unit pursuant to a sale under power contained in such

Mortgage. Such subordination is merely a subordination and shall not relieve the Owner of the Unit of the personal obligation to pay all assessments coming due during such period of ownership; shall not relieve such Unit from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such Unit to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of such Unit of any personal obligation or relieve such Unit or the then Owner of such Unit from liability for any assessment authorized hereunder become due after such sale and transfer.

4.7 Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in the amount of the greater of Ten (\$10.00) Dollars or Ten percent (10%) of the amount due. The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a claim of lien with the Office of the Clerk of Superior Court of Cobb County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments. Each Owner, by acceptance of a deed vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Unit at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property (other than access to such Owner's Unit) and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association, including without limitation, suspension of utility services provided by the Association, until all assessments, costs and re-connection charges are paid in full. Any such suspension shall not affect such members obligation to pay assessments coming due during the period of such suspension and shall not effect the permanent lien on such Unit in favor of the Association.

4.8 Date of Commencement of Assessments. The assessments provided for herein shall commence as to a Unit on the first to occur of the date that the Unit is first occupied for residential purposes; or is conveyed by Declarant or an Approved Builder to an owner who is not an Approved Builder or successor Declarant. A Unit shall be occupied for residential purposes

when it has been improved with a dwelling and has been conveyed to an owner who intends to occupy the dwelling as a residence, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide.

4.9 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the annual, special and specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Community. No Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

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

4.11 Estoppel Letter. The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, as established by the Board, certify to the amount of any unpaid assessments constituting a lien on a specified Unit. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Unit shall be binding upon the Association.

4.12 Initiation Fee. Upon conveyance of title to a Unit to the first Owner, other than the Declarant or the Approved Builder, an initiation fee in the amount of one-sixth (1/6) of the total general assessment for the Unit for such year shall be collected from the purchaser at the closing of such transaction and paid to the Association. The initiation fee shall constitute a specific assessment against the Unit, shall be in addition to, not in lieu of, the annual general assessment and shall not be considered an advance payment of such assessment. The initiation fee may be used by the Association for any purpose, including, without limitation, for the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions of this Declaration.

## Article 5

### Maintenance; Common Property

5.1 Association's Maintenance Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and improvements situated on the

Common Property. The Association shall also maintain (whether or not constituting Common Property): (a) all entry features and entry area landscaping in the Community; (b) the exterior portions of all Units as provided in Section 5.4 hereof; (c) landscaping improvements located on the exterior portions of the Community, including parks, open space, medians and islands; (d) any irrigation system and the expenses for water and electricity, if any, provided to all entry features and Community landscaping; (e) Community street signs and street lights, including the expenses for electricity provided to all street lights; (f) all private Community streets, roads, paths and sidewalks, including, without limitation, Akers Drive; (g) storm water detention/retention ponds and storm water drainage facilities serving the Community, if and to the extent such facilities are not maintained by a governmental entity; (h) perimeter walls and fencing in the Community, if any; (i) all water and sanitary sewer pipes or facilities that serve more than one Unit if and to the extent the same are not maintained on an ongoing basis by a governmental entity; (j) recreational facilities serving the Community, if any; (k) the Gate System serving the Community, if any; and (l) driveways and walkways serving a Unit. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, shall be assessed against the Owner as a specific assessment. Any common irrigation system installed by the Declarant or the Association shall be Common Property, operated, maintained, repaired and replaced by the Association. The deed of conveyance of any Unit shall not include any right, title or interest in such irrigation system, if any.

5.2 Owner's Maintenance Responsibility. Except for maintenance performed on a Unit by the Association pursuant to Sections 5.1 and 5.4 hereof, all maintenance of the Unit and all structures and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Unit in a manner consistent with this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; keeping improvements, and exterior lighting in good repair and working order; complying with all governmental health and police requirements; and repair of exterior damage to improvements. In addition, Owners shall maintain any pipe(s), wire(s) and conduit(s) which serve only the Unit, whether said pipe(s), wire(s) or conduit(s) are located within or outside of a Unit's boundaries. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-day period, to

commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement and all costs thereof shall be assessed against the Owner and the Unit as a specific assessment.

**5.3 Party Walls.** Each wall or fence whether built as part of the original construction of the Units or added pursuant to Article 6 hereof which shall serve and separate any two (2) adjoining Units shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall or fence may restore it, and the other Owner who is benefited by the wall or fence shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

**5.4 Unit Maintenance.** As provided in Section 5.1 above, the Association shall maintain and keep in good repair the exterior portions of all Units of the Community. Maintenance by the Association of exterior portions of Units shall include the following: (a) exterior surfaces of garage doors; (b) all roofs, downspouts and gutters; (c) all exterior building surfaces with the exception of hardware and glass; provided, however, the Association shall not be responsible for waterproofing foundations either above or below grade; and (d) all driveways and walkways serving a Unit. The Association shall not be responsible for maintaining and keeping in good repair the following: (i) steps, decks (whether enclosed or not) and deck surfaces, patios (whether enclosed or not) and patio surfaces and landscaping within the patios, planters and courtyards, if any, of the Units; (ii) HVAC or similar equipment located outside the Units; (iii) all doors, including screen and storm doors, hinges, frames and door frames and hardware which are part of the entry system; (iv) hose bibs contained in exterior walls of a Unit; (v) lighting fixtures pertaining to a particular Unit and being located outside an entryway or in a garage; (vi) window screens, window frames and glass; (vii) foundations and footings, including waterproofing; and (viii) pipes which serve only one (1) Unit whether located within or outside of the Unit's boundaries. The Board of Directors may promulgate rules setting forth the extent of maintenance to be performed by the Association and may assume responsibility for providing additional maintenance as long as Units have equal rights to maintenance. The Board of Directors may authorize the officers of the Association to enter into contracts with any Person or Persons to perform maintenance hereunder on behalf of the Association.

**5.5 Conveyance of Common Property by Declarant to Association; No Implied Rights.** The Declarant may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and maintained by the Association for the

benefit of its members. The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept on behalf of the Association any conveyance to the Association and to execute on behalf of the Association any and all documents, including, without limitation, deeds and transfer tax declaration forms, necessary or convenient to effectuate and document any such conveyance to the Association. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise. The Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. The Declarant may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the real estate records of the county where the property is located.

5.6 Conveyance of Open Space by Declarant to Private or Governmental Entity. The site plans and marketing brochures for Chattahoochee Bluffs contain open space which is not intended for development by the Declarant or the Approved Builder and which may be conveyed to a private or governmental entity for preservation as a conservation area or green space park or conveyed to the Association subject to a conservation easement as such term is defined in O.C.G.A. §44-10-1, *et seq.* In the event said open space is encumbered with a conservation easement and conveyed to the Association, the open space will be owned, operated and maintained by the Association as Common Property pursuant to the provisions of this Declaration, including, without limitation, Section 7.26 hereof.

5.7 Partition. The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Units.

5.8 Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within 60 days after such taking, an alternative plan is approved by at least 75% of the Total Association Vote and the consent of Declarant. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Property shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

5.9 Liability. Owners, Occupants and their guests shall use the Common Property and all portions of the Community not contained within a Unit at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on the Common Property or any other portion of the Community. The Association shall not be liable for injury or damage to any Person or property (a) caused by the elements or by an Owner or any other Person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or Occupant for loss or damage, by theft or otherwise, of any property of such Owner or Occupant.

5.10 Measures Related to Insurance Coverage.

(a) The Board of Directors shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Community that are the maintenance responsibility of the Unit Owner which will, in the Board's sole discretion, decrease the possibility of fire or other damage to any improvements located in the Community, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all Owners to turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes; requiring Owners to install smoke detectors; requiring Owners to make improvements to the Owner's Unit; and such other measures as the Board may reasonable require, so long as the cost of such work does not exceed the amount of the annual general assessment applicable to the Unit in any twelve (12) month period.

(b) In addition to, and not in limitation of, any other rights the Association may have, if any Unit Owner does not comply with any reasonable requirement made by the Board pursuant to Section 5.10(a) above, the Association, upon fifteen (15) days' written notice (during which period the Unit Owner may perform the required act or work without further liability), may perform such required act or work at the Unit Owner's sole cost. Such cost shall be a specific assessment and a lien against the Unit and shall be collected as provided herein for the collection of assessments. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to Section 5.10(a) above, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

5.11 Gated Community. Declarant or the Association may, but shall not be required to, install a mechanical system that limits vehicular access to streets located within the Community



from Akers Drive (the "Gate System"). By accepting a Deed to a Unit, each Owner shall acknowledge and agree to the following:

(a) The Board of Directors, with the consent of the Declarant, shall determine when the Gate System will be operational.

(b) Neither Declarant nor the Association shall be responsible for the security of Owners, Occupants or their family members, guests, invitees or property. The purpose of the Gate System shall be to provide some degree of restriction of vehicular access onto the private Community streets. NEITHER DECLARANT, THE ASSOCIATION NOR ANY OWNER GUARANTEES OR ASSURES TO ANY OTHER OWNER NOR ANY OTHER PARTY WHOMSOEVER THAT THE GATE SYSTEM WILL IN ANY MANNER WHATSOEVER PROVIDE PERSONAL PROTECTION OR SECURITY TO ANY OWNER OR OCCUPANT, THEIR PERSONAL POSSESSIONS OR TO GUESTS OR INVITEES, OR TO ANY OTHER PERSON, AND EACH OWNER, BY THE ACCEPTANCE OF ITS DEED, SHALL HAVE ASSUMED THE ENTIRE RISK AS BETWEEN SUCH OWNER AND DECLARANT OR THE ASSOCIATION FOR ANY LOSS OR DAMAGE TO PERSON OR PROPERTY WITHIN THE COMMUNITY ARISING FROM ANY DEFICIENCY, FAILURE OR DEFECT IN THE GATE SYSTEM OR OTHERWISE.

(c) All governmental authorities shall have access to the Community for law enforcement, safety and emergency purposes. Each Owner shall look solely to the applicable governmental authority for the provision of law enforcement and police protection.

(d) The Gate System is not intended to replace or to serve in lieu of individual alarm systems or other measures to provide security at a residence or within any Unit. Each Owner is encouraged to install personal security devices upon and within such Owner's Unit to the same extent that would be prudent if the Gate System did not exist.

(e) The Gate System will be installed based upon the representations of vendors regarding the operation and performance capabilities of the components of the Gate System.

(f) DECLARANT DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER REGARDING THE GATE SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR THE PURPOSES FOR WHICH IT WAS DESIGNED. Declarant does not expressly or impliedly guarantee that the Gate System will avert or prevent occurrences or consequences which the Gate System is designed to avert or prevent.

(g) The Gate System shall be owned, operated, and maintained by the Association at its sole cost and expense. Declarant shall not be required to operate or maintain the Gate System.

(h) Each Owner shall use the Gate System in the proper manner and within the rules and regulations relating thereto as may be adopted from time to time by the Board of Directors.

Article 6  
Architectural Standards

6.1 General. No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling, construction of impervious surface, building, exterior alteration of existing improvements, storm and screen doors, storm windows, fencing, change in the exterior color of any existing improvement and planting and removal of landscaping materials), shall be commenced or placed upon any part of the Community unless, installed by the Declarant or the Approved Builder, approved in accordance with this Article, or otherwise expressly permitted under this Declaration. Any Owner may remodel, paint or redecorate the interior of structures on the Unit without approval hereunder. However, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme. This Article shall not apply to the activities of the Declarant, affiliates of the Declarant, any Approved Builder, nor to improvements by or on behalf of the Association. This Article may not be amended without the written consent of the Declarant and all Approved Builders until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Unit has been improved with a dwelling for which a certificate of occupancy has been issued.

6.2 Guidelines and Procedures. Except as provided above, no exterior construction, addition or alteration shall be made unless and until plans and specifications shall have been submitted in writing to and approved by the Approved Builder. Such plans and specifications shall be of sufficient detail to allow the Approved Builder to make its review and to the extent required by the Approved Builder shall show the nature, kind, shape, height, materials and location of the proposed improvement. The Approved Builder may adopt written architectural guidelines and application and review procedures, which may provide for a review fee. The Approved Builder shall have sole and full authority to prepare and to amend, from time to time at its sole discretion and without notice, the architectural guidelines. The Approved Builder shall make the architectural guidelines available to Owners who seek to engage in construction upon all or any portion of the Community and such Owners shall conduct their operations strictly in accordance therewith. If the Approved Builder fails to approve or to disapprove submitted plans and specifications within thirty (30) days after receipt of all required plans and specifications, such approval shall be deemed denied. The Approved Builder shall be the sole arbiter of such plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of any provision of this Declaration. Plans and specifications are not approved for engineering or structural design or quality of materials and by approving such plans and specifications the Approved Builder assumes no liability or responsibility therefor or for any defect in any structure constructed from such plans and specifications.

6.3 Limitation of Liability. Plans and specifications are not approved for engineering or structural design or quality of materials and by approving such plans and specifications the Approved Builder assumes no liability or responsibility therefor or for any defect in any structure

constructed from such plans and specifications. Neither Declarant, Approved Builder, the Association, 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 nonfeasance 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 such Person or Owner will not bring any action or suit against the Declarant, the Approved Builder, the Association or the officers, directors, members, employees and agents of any of them to recover any damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance 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.

6.4 No Waiver. The approval of the Approved Builder of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval or consent of the Approved Builder, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications or drawings or matters whatever subsequently or additionally submitted for approval or consent.

6.5 Variances. Notwithstanding anything to the contrary contained herein, the Approved Builder or the Declarant shall be authorized to grant individual variances from any of the provisions of this Declaration and the architectural guidelines if it determines that waiver of application or enforcement of the provision in a particular case is dictated by unique circumstances, such as, but not limited to, topography, natural obstructions, hardship, aesthetic considerations or environmental considerations and would not be inconsistent with the overall scheme of development for the Community. No variance shall (a) be effective unless in writing, (b) be inconsistent with the overall scheme of development for the Community, or (c) estop the Declarant or the Approved Builder from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.6 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Approved Builder, Owners shall, at their own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Approved Builder and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. In addition to, or in lieu of, the Association may elect to impose fines for non-compliance with this Article as provided in Article 11, hereof. All costs, including, without limitation, attorney's fees, may be assessed against the Unit as a specific assessment.

6.7 Architectural Review Committee. Until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Unit has been improved with a dwelling for which a certificate of occupancy has been issued, the Approved Builder shall have the sole right, power and authority under this Article. There shall be no surrender of this right except in a written instrument in recordable form executed by Approved Builder and recorded in the land records of the Clerk of the Superior Court of Cobb County, Georgia. Upon expiration or earlier surrender in writing of all or a portion of such right and authority, the Board of Directors shall automatically constitute the Architectural Review Committee of the Association, and shall then have such jurisdiction over architectural control under this Article as may have been relinquished by the Approved Builder. After the termination of all rights of Approved Builder hereunder, the Board of Directors shall have all right, power and authority to review and approve building and construction activity within the Community and this Article shall then be read and interpreted as if any reference to the authority of or action by the Approved Builder in this Article 6 were a reference to the authority of or action by the Board of Directors.

## Article 7 Use Restrictions and Rules

7.1 Rules and Regulations. The Board of Directors may, from time to time, with the consent of Declarant and without a vote of the members, promulgate, modify or delete rules and regulations applicable to the Community. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote and the consent of Declarant.

7.2 Residential Use. Each Unit shall be used for residential purposes exclusively. Leasing of a Unit for residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Unit, except that the Owner or Occupant in residence at the Unit may conduct business activities within the house so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Unit; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Community, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. 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: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity.

7.3 Signs. No sign of any kind shall be erected or displayed within the Community without the prior written consent of the Declarant or, after the termination of the rights of Declarant hereunder, the Board of Directors. Notwithstanding the foregoing, the Board, the Declarant and the Approved Builder shall have the right to erect reasonable and appropriate signs. For-sale signs and security signs not larger than 18-inches by 18-inches and any signs required by legal proceedings may be erected upon any Unit. The provisions of this Section shall not apply to any Mortgagee in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure. The Board may impose a fine of One-Hundred and Fifty and No/100 Dollars (\$150.00) per day for display of any sign in violation of this provision which is not removed within twenty-four hours after written demand is delivered to the Owner at that Unit.

7.4 Vehicles; Parking. Vehicles shall be parked only in appropriate parking spaces serving the Unit or other designated areas, if any. No on-street parking, other than in connection with special events as approved by the Board of Directors, shall be permitted within the Community. Notwithstanding the foregoing, the Declarant and the Approved Builder, and their respective agents, subcontractors and assigns shall have the right, during regular business hours, to park vehicles on any and all streets within the Community as needed in order facilitate the construction, development and build out of the Community. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking areas" shall refer to the number of garage parking spaces and the spaces located in the driveway of each Unit. All homes shall contain a garage; carports shall not be permitted. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five days if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle may be removed from the Community by the Board of Directors. Any towed vehicle, boat, personal watercraft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go-cart, golf cart, commercial truck, camper, bus or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage, for periods longer than 24 hours may be removed from the Community by the Board of Directors. Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. No eighteen wheel trucks or the cabs of such trucks or trucks with a load capacity in excess of three-quarters of a ton shall be parked, kept or stored within the Community except during the time reasonably necessary to provide service or delivery within the Community.

If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity that will do the towing and the name and telephone number of a

person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle, is obstructing the flow of traffic, is parked on any landscaped area, or otherwise creates a hazardous condition, no notice shall be required and the Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

**7.5 Animals and Pets.** No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Unit, with the exception of dogs, cats or other usual and common household pets in reasonable number as determined by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs shall at all times when outside the Unit be kept on a leash or otherwise under control. All pets shall be registered, licensed and inoculated if and as required by law. Animal control authorities shall be permitted to enter the Community to patrol and remove unlicensed pets. An Owner shall not allow any animal waste to remain on the Common Property, Community open space, or any landscaped area maintained by the Association.

**7.6 Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Unit. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition; nor shall any substance, thing or material be kept that will emit foul odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No activity that the Board of Directors determines to be noxious or offensive shall be carried on within the Community. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may in the reasonable opinion of the Board of Directors diminish or destroy the enjoyment of the Community by other Owners and Occupants.

**7.7 Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

**7.8 Antennae.** No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Unit, unless approved in accordance with the

provisions of Article 6 hereof; provided, however, no such approval shall be necessary to install (a) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services, that are one meter or less in diameter; (b) antennas designed to receive video programming services via multi-point distribution services that are one meter or less in diameter or diagonal measurement; or (c) antennas that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the dwelling unless an acceptable quality signal cannot otherwise be obtained.

7.9 Guns. The use of firearms in the Community is prohibited. The term "firearms" includes, without limitation, B-B guns, pellet guns, archery equipment and firearms of all types.

7.10 Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any part of the Community by an Owner. The Declarant and the Association may erect any type of fence on the Common Property or elsewhere within the Community as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for health and safety of Owners and Occupants.

7.11 Air-Conditioning Units. No window air conditioning units may be installed.

7.12 Lighting. Exterior lighting on any Unit shall not be permitted, except for: (a) approved lighting as originally installed on a Unit; (b) seasonal decorative lights; or (c) other lighting approved under and pursuant to Article 6 hereof.

7.13 Artificial Vegetation. No artificial vegetation shall be permitted on the exterior of any property.

7.14 Flags. No flags may be displayed on any Unit without prior written approval in accordance with the provisions of Article 6 hereof; provided, however no such approval shall be required to display the flag of the United States of America and the current flag of the State of Georgia on a Unit in accordance with the provisions of the U.S. Flag Code (36 US Code 10) and usual and customary practice. The Board of Directors of the Association may promulgate reasonable rules and regulations with respect to the display of flags in the Community, including, without limitation, regulating the size of flags that may be displayed.

7.15 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless approved in accordance with the provisions of Article 6 hereof.

7.16 Clotheslines. No exterior clotheslines of any type shall be permitted upon any Unit.

7.17 Yards. Owners shall not add trees, shrubs, bushes, plants or other vegetation to the exterior portions of the Community maintained by the Association without the prior written consent of the Board of Directors.

7.18 Window Treatments. All Unit windows shall have window treatments and any portion thereof visible from outside the Unit shall be white or off-white in color, unless otherwise approved in accordance with Article 6 hereof. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose.

7.19 Storm and Screen Doors and Windows. Owners shall not add storm and screen doors and storm windows on any Unit without prior approval in accordance with the provisions of Article 6 hereof.

7.20 Drainage. Catch basins, retention ponds, detention ponds, drainage easement areas and related drainage facilities are for the purpose of controlling the natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner may obstruct or alter the drainage flows after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article 6 hereof.

7.21 Garbage Cans, Firewood, Etc. All garbage cans, firewood and other similar items shall be stored within the garage of the Unit. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. The Association will contract with a private trash collection company to pick up all usual and customary household trash on a regular basis. Trash and recycling receptacles shall be placed at the curb no earlier than 5:00 p.m. the day before pick up and shall be removed within twenty-four (24) hours. Trash pick up shall also be subject to such reasonable rules and regulations as the Board of Directors may adopt.

7.22 Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed except with the prior written approval in accordance with the provisions of Article 6 hereof. Declarant, however, hereby expressly reserves the right to subdivide and/or revise and re-record the subdivision plat of any Unit(s) with the consent of the Owner of the effected Unit(s) and to approve the revision and re-recording of any plat of any Unit(s) owned by any builder or developer, including, but not limited to, changing any Unit to Common Property or creating a public or private street over any Unit or property that was formerly a Unit, without the consent of any Person, other than the Owner(s) of such Unit(s).

7.23 Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to Units, increased common expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within all Units shall be maintained with heating operating and at a minimum of fifty (50°) degrees Fahrenheit during the months of October, November, December, January, February, March, and April. Owners shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working, the Owner shall immediately inform the Owners of the other Units of this failure of the equipment and of the time needed in order to repair the equipment and shall take reasonable steps to keep the Unit heated sufficiently to prevent the breakage of water pipes.



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

7.25 Traffic Regulations. All vehicular traffic on the private streets and roads in the Community shall be subject to the provisions of the state and local laws concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits and including modifications of those in force on public streets, within the Community. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of state and local laws and such rules and regulations promulgated by the Association, the rules and regulations of the Association shall govern. Only drivers properly licensed to operate motor vehicles on the public roads within the State of Georgia may operate any type of motor vehicle within the Community. All vehicles of any kind and nature which are operated on the streets in the Community shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all Owners and Occupants.

7.26 Open Space Conservation Area. The site plans and marketing brochures for Chattahoochee Bluffs contain open space which is not intended for development by the Declarant or the Approved Builder and which may be conveyed to the Association as Common Property which is or may be encumbered by a conservation easement as such term is defined in O.C.G.A. §44-10-1, *et seq.* ("Open Space Conservation Area"). The Association, the Declarant or the Approved Builder shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of any Open Space Conservation Area within the Community. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any Open Space Conservation Area. The Open Space Conservation Area(s), if any, shall remain primarily as undisturbed natural areas; provided however, the Open Space Conservation Area(s), if any, may be used for recreation purposes consistent with the conservation easement and as permitted by the Association. Applicable governmental agencies, the holder of any conservation easement, the Declarant and the Association, shall have the sole right to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any Open Space Conservation Area. The Board of Directors may issue rules and regulations on the permissible use of the Open Space Conservation Area, by Owners, Occupants and guests which rules and regulations shall not be inconsistent with the purposes and intentions of the conservation easement and preserving the property as a conservation area or green space park.

## Article 8 Restriction on Leasing

8.1 Leasing. In order to protect the equity of the individual Members, to carry out the purpose for which the Association was formed by preserving the character of the Community as a

homogenous residential community of predominantly owner-occupied homes and by preventing the Community from assuming the character of a renter-occupied neighborhood, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially owner-occupied, leasing of Units shall be governed by the restrictions imposed by this Article. Except as provided herein, the leasing of Units shall be prohibited.

## 8.2 Definitions.

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

8.2.2 Open Leasing Status. Any Unit that is designated as being in "Open Leasing Status" shall authorize a Unit to be leased at any time. For purposes of this Section only, a lease shall continue, regardless of extensions or renewals, for so long as the existing lessee remains as lessee. The lease shall terminate at such time as the existing lessee ceases to be lessee. Unless so converted to Restricted Leasing Status, a Unit designated as being in Open Leasing Status shall remain in Open Leasing Status until such time as title to the Unit is conveyed or transferred to another person or entity, after which conveyance the Unit shall be converted to Restricted Leasing Status regardless of the continued occupancy by the same lessee unless the new Owner requests that the Unit remain in Open Leasing Status within ninety (90) days of said conveyance. Open Leasing Status may be temporarily conferred upon a Unit as provided in Section 8.4 below or may be applied for as provided in Section 8.3 below.

8.2.3 Restricted Leasing Status. Any Unit that is designated as being in "Restricted Leasing Status" shall prohibit a Unit Owner from leasing his or her Unit except as may be provided below. All Units shall be in Restricted Leasing Status unless converted to Open Leasing Status as provided in Section 13.3 below.

8.3 General. No Owner of a Unit in Restricted Leasing Status may lease his or her Unit if five (5%) percent or more of the Units in the Community are in Open Leasing Status, except as provided in Section 13.4 below for cases of undue hardship. Any Owner of a Unit in Restricted Leasing Status may apply in writing to the Board of Directors for conversion to Open Leasing Status in accordance with rules and regulations promulgated by the Board of Directors. Upon receipt of such written application, the Unit shall be placed at the end of a waiting list for conversion to Open Leasing Status. At such times as less than five (5%) percent of the Units are in Open Leasing Status, the Board shall notify the Owner of the Unit at the top of the waiting list of its conversion to Open Leasing Status, and such Owner shall have ninety (90) days within which to lease the Unit or it shall automatically revert to Restricted Leasing Status. Any Unit in

Open Leasing Status shall automatically be converted to Restricted Leasing Status if the Unit is not subject to an approved lease for ninety (90) or more consecutive days.

8.4 Undue Hardship. Notwithstanding the provisions of Section 8.3 above, the Board of Directors shall be empowered to allow reasonable leasing of a Unit upon application in accordance with this Article to avoid undue hardship, including, but not limited to the following situations: (1) a Unit Owner must relocate his or her residence outside the Atlanta metropolitan area and cannot, within six (6) months from the date that the Unit was placed on the market, sell the Unit except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) the Owner dies and the Unit is being administered by his or her estate; and (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Unit, in which case the Unit Owner must reapply every year for renewal of the hardship exception. Those Owners who have complied with this Section, have demonstrated that the inability to lease their Unit would result in undue hardship, and have obtained the requisite written approval of the Board may lease their Units for such duration as the Board reasonably determines is necessary to prevent undue hardship.

Any Owner who believes that he or she must lease his or her Unit to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application. When an application is approved, the Owner shall provide the Board with the name and phone number of the lessee and the Owner's address other than at the Unit and other such information as the Board may reasonably require within ten (10) days after a lease has been signed by both parties.

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

8.5 Leasing Provisions. Such leasing as is permitted by this Article shall be governed by the following provisions:

8.5.1 General. Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing in a form approved by the Board prior to the effective date of the lease. The Board shall maintain in its files and, upon request, shall provide to any Owner a form which is deemed acceptable. There shall be no subleasing or assignment of leases unless approved in writing by the Board. All leases must be for an initial term of at least one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Unit, the phone number of the lessee and the Owner's address other than at the Unit and other such information as the Board may reasonably require within ten (10) days after a lease has been signed by both

parties. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations and the lease form shall provide that the Owner has made available to the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

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

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

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

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

8.5.3.2 Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property of the Association, including, but not limited to, the use of any and all recreational facilities and other amenities.

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

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

#### Article 9

#### Insurance and Casualty Losses

9.1 Insurance. The Board of Directors shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Property or required to be maintained by the Association under Article 5 hereof and blanket insurance for all Units; provided however, the Association's insurance shall not include the Unit Owner's personal property (which shall be the sole responsibility of the Unit Owner). This insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief and shall be in the amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all risk" coverage in like amounts.

The Board of Directors shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars. Policies may contain a reasonable deductible as determined by the Board of Directors.

Premiums for all insurance shall be a common expense of the Association.

In addition to other insurance coverage required by this Section, the Board shall obtain workers compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law, and, if available at reasonable cost, as determined in the sole discretion of the

Board, a fidelity bond or employee dishonesty coverage covering directors, officers, employees and other Persons handling or responsible for the Association's funds. The amount of fidelity or employees dishonesty coverage, if obtained, shall be determined in the director's best business judgment. Such coverage, if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least ten (10) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

## 9.2 Damage and Destruction.

(a) In General. 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 of Directors 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, allowing for any changes or improvements necessary to comply with applicable building codes.

(b) Repair and Construction. Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the Total Association Vote and the Declarant, and the Owners of any damaged Units 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 sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed. 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 of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against the Owners of Units who would be responsible for such loss in the absence of insurance or otherwise to the Owners of all Units. 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 to the benefit of the Association. In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

9.3 Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Property, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total costs of repair, unless the insurance policy provided that the deductible will apply to each Unit separately. If any Owner fails to pay the deductible when required hereunder, the Association can pay the deductible and assess the cost to any such Owner pursuant to Article 4 of this Declaration; provided, however, no Owner shall be assessed more than One Thousand Dollars (\$1,000.00) as the cost of the deductible for any one occurrence.

Article 10  
Mortgagee Provisions

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

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

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

Article 11  
Easements

11.1 General. Each Unit shall be subject to those easements, if any, shown or set forth on the recorded subdivision plat for the Community, as amended from time to time as well as the easements now or hereafter established by the Declarant in this Declaration or by any other document recorded in the Office of Superior Court of Cobb County, Georgia.

11.2 Easements for Use and Enjoyment. Every Owner shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the Occupants of the Owners Unit in and to the Common Property which shall be appurtenant to and shall pass with the title to each Unit, subject to the following:

(a) the right of the Association to suspend the right of an Owner to use the Community recreational facilities, if any, for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations;

(b) the right of the Association to charge reasonable admission and other fees for the use of Community recreational facilities, if any, to limit the number of Persons who may use the Community recreational facilities, if any, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by authorized users and their guests and invitees;

(c) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least two-thirds of the Units (other than Declarant) and the consent of Declarant, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Unit in the Community (Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Unit in the Community.);

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

(e) the right of the Association to dedicate or transfer all or any portion of the Common Property upon the approval of the Owners of at least two-thirds of the Units (other than Declarant) and the Declarant;

(f) all other rights of the Association, the Declarant, Owners and Occupants set forth in this Declaration or in any deed conveying Common Property to the Association; and

(g) all encumbrances and other matters shown by the public records affecting title to the Common Property, including, without limitation, those easement rights reserved or granted to the owners of property adjacent to the Community as described in the following: (a) Quitclaim Deed by and between the United States of America and Akers Mill Plantation Company,



recorded on November 5, 1982, at Deed Book 2620, Page 233, Cobb County, Georgia records; (b) Declaration of Covenants, Conditions, Restrictions and Easements for the Highlands at Akers Mill Community, recorded on March 26, 1984, at Deed Book 3064, Page 333, aforesaid records; and (c) Limited Warranty Deed by and between The Highland Company and American Home Equities, Inc., recorded on February 25, 1985, Deed Book 3413, Page 83, aforesaid records.

11.3 Easements for Encroachment and Overhang. There is hereby reserved to the Declarant for the benefit of each Unit a reciprocal appurtenant easement for encroachment and overhang between adjacent Units and between a Unit and adjacent Common Property due to the original construction or the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than two (2) feet, as measured from any point on such common boundary; 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, Occupant, or the Association, other than the Declarant in the original construction of the Units.

11.4 Easement for Utilities - Association and Declarant. There is hereby reserved to the Declarant and granted to the Association a blanket easement upon, across, above and under all property within the Community for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television system, or security system which the Declarant or the Association might decide to have installed to serve the Community. Declarant, the Association or the designee of either, as the case may be, may install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board shall have the right to grant such easement.

11.5 Easement for Utilities- Unit Owner. Declarant hereby establishes for the benefit of each Unit a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving such Unit and situated in, on or under any other Unit or the Common Property. The Board of Directors, and without a vote of the Owners, shall have the right, power and authority to grant permits, licenses, utility easements, and other easements, permits or licenses necessary or desirable for the proper maintenance or operation of the Community under, through, or over the Units and/or the Common Property as may be reasonably necessary to or desirable for the ongoing operation of the Community. In the event that any Owner desires access to another Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owner of such other Unit(s) at least two (2) days in advance of the date that access is needed and attempt to agree on a convenient date and time for access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a Unit to which access is needed under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to

this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Units, reasonable steps shall be taken to protect such Units and the property of the Owners and Occupants thereof, and damage shall be repaired by the Person causing the damage at its sole expense.

11.6 Easement for Emergency Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, the Bylaws, and rules, which right may be exercised by any member of the Board, the officers, agents, employees, and managers of the Association and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association, but shall not authorize entry into the interior living space of any Unit without permission of the Owner.

11.7 Easement for Association Maintenance. Declarant hereby grants to the Association a perpetual easement across all Units as may be reasonably necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Units, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole expense. Except in an emergency situation, entry to the interior of a Unit shall only be during reasonable hours and after notice to the Owner.

11.8 Easement for Unit Maintenance. Declarant hereby reserves for the benefit of each Unit reciprocal appurtenant easements between adjacent Units for the purpose of maintaining or repairing the improvements located on each Unit which easement shall extend to a distance of five (5) feet as measured from any point on the common boundary between the Units. The easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the Unit over which this easement is exercised which arises out of such maintenance or repair work.

11.9 Easement for Drainage. There is hereby reserved to the Declarant and granted to the Association and the Approved Builder a blanket easement across the Community for creating and maintaining satisfactory drainage in the Community; provided, however, such easement area shall not include any portion of a Unit within the outer perimeter of the dwelling structure. This easement shall include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill.

11.10 Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, architectural guidelines, and amendments thereto, Declarant

reserves an easement across the Community for Declarant and any Approved Builder to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's and such Approved Builder's development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or nearby property being developed by Declarant or such Approved Builder, including, but not limited to: the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Unit; the right to tie into any portion of the Community with streets, driveways, paths, 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, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to grant easements over, under, in or on the Community, including without limitation the Units, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to convert Units (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant and any such Approved Builder may use residences, offices or other buildings owned or leased by Declarant or such Approved Builder as model residences and sales offices without charge. This Section shall not be amended without the written consent of Declarant and Approved Builder until their respective rights hereunder have terminated as herein provided.

11.11 Easement for Private Streets, Sidewalks and Signs. Declarant hereby grants, conveys, declares, creates, imposes and establishes a perpetual, non-exclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across the private streets within the Community, including, without limitation, Akers Drive, as depicted on the subdivision plat(s) recorded in the Office of the Clerk of Superior Court of Cobb County, Georgia. The right-of-way easement herein granted shall permit joint usage of such easement by (a) the Owners and Occupants, (b) the legal representatives, successors and assigns of the Owners, and (c) invitees and licensees of the Owners and Occupants. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any right-of-way easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional non-exclusive easements to third parties, over, under and across the easement area. Declarant hereby reserves for the benefit of Declarant and grants to the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across those utility easement areas and private streets and roads for the installation, maintenance, and use of such streets and roads, sidewalks, traffic directional signs, grading for proper drainage of said streets and roads, and related activities and improvements.

Article 12  
General Provisions

12.1 Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plat for the Community and in the deed to such Owner's Unit. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, including, without limitation, reasonable attorney's fees actually incurred, maintainable by the Association, the Declarant or an aggrieved Owner. Failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or design guidelines and to assess the cost of recording and removing such notice against the Unit of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

12.2 Duration. The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community and shall inure to the benefit of and shall be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, if and to the extent that, Georgia law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision(s) shall be (a) automatically extended for successive periods of twenty (20) years (or the maximum period allowed by Georgia law, if less), unless a written instrument signed by the then Owners of at least two-thirds (2/3) of the Units has been recorded within the two years immediately preceding the beginning of a twenty (20) year renewal period agreeing to terminate the same; or (b) extended, renewed, modified or terminated as otherwise provided herein or by applicable law.

12.3 Occupants Bound. All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and architectural guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants and the guests and invitees of Owners and Occupants. The Owner shall be responsible for insuring that the Occupants, the guests, invitees and licensees of the Owner and Occupant strictly comply with all provisions of the Declaration, Bylaws, rules and regulations, use restrictions and architectural guidelines.

12.4 Self-Help. In addition to any other remedies provided for herein, the Association, the Declarant, the Architectural Review Committee or their respective duly authorized agents shall have the power to enter upon any Unit or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Owner

shall be given ten days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.

12.5 Termination of Rights of Declarant and Approved Builder. The rights of Declarant and Approved Builder to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant or the Approved Builder as the case may be no longer owns any property in the Community and Declarant no longer has the right to unilaterally annex additional property to the Community as provided herein and a certificate of occupancy has been issued for a dwelling on each Unit in the Community; or (b) the date of recording by Declarant (or by an Approved Builder) in the real estate records of the county where the Community is located of a written instrument terminating all of Declarant's (or Approved Builder's) rights hereunder.

12.6 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Units subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company, including without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Units subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner of such Unit consents thereto in writing. Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder nor shall it adversely affect title to any Unit without the consent of the affected Owner. The Board of Directors, with the written consent of the Declarant, and without a vote of the members may amend this Declaration for the sole purpose of electing to be governed by and thereafter complying with the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220 *et seq.* In addition to the above, this Declaration may be amended upon the affirmative vote or written consent of Owners of at least two-thirds of the Units and the consent of Declarant. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any

notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given.

12.7 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine or feminine pronoun shall include the neuter, masculine and feminine.

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

12.9 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

12.10 No Merger. There shall be no merger of any of the covenants, conditions, restrictions or easements created or reserved hereby with the fee estate of Declarant, by reason of the fact that Declarant may own or hold the estate or interest both encumbered and benefited by such covenants, conditions, restrictions or easements and no such merger shall occur unless and until Declarant, while owning all of the estate or interests shall execute a written statement or instrument affecting such merger and shall duly record the same.

12.11 Preparer. This Declaration was prepared by David N. Dorough, Jr. and Lisa A. Crawford, Dorough & Dorough, LLC, Attorneys at Law, Two Decatur TownCenter, Suite 520, 125 Clairemont Avenue, Decatur, Georgia 30030.

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

12.13 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities,

then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

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

12.15 Security. The Declarant, Approved Builder or the Association may, from time to time, take steps to provide some measure of security on the Common Property of the Community; provided, however, neither the Declarant, the Approved Builder nor the Association is a provider of security and shall have no duty to provide any security on the Common Property or otherwise. The obligation to provide security lies solely with each Unit Owner individually. Neither Declarant, Approved Builder, the Association nor any Owner guarantees or assures to any other Owner or to any other party whomsoever that any security measures taken by the Declarant, Approved Builder, the Association or an Owner will in any manner whatsoever provide personal protection or security to any Owner or Occupant, their personal possessions or to guests or invitees, or to any other person, and each Owner, by the acceptance of its deed, shall have assumed the entire risk as between such Owner and Declarant or the Approved Builder or the Association for any loss or damage to person or property within the Community arising from any deficiency, failure or defect in any security measures or otherwise.

12.16 Indemnification. To the fullest extent allowed by the Georgia Nonprofit Corporation Code, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorney's fees, imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

12.17 Agreements. Subject to the prior approval of Declarant all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

12.18 Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case is warranted and would not be inconsistent with the overall scheme of development for the Community.

12.19 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least 75% of the Total Association Vote and the consent Declarant. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (b) the imposition and collection of assessments as provided herein, (c) proceedings involving challenges to *ad valorem* taxation, (d) counterclaims brought by the Association in proceedings instituted against it, or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for goods or services to which the Association is a party. This Section shall not be amended unless such amendment is made unilaterally by the Declarant as provided herein or is approved by the percentage votes necessary to institute proceedings as provided above.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

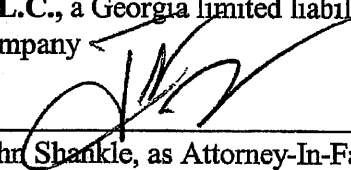





IN WITNESS WHEREOF, the undersigned Owner of some or all of the tract or parcel of land described on Exhibit "A" attached hereto does hereby declare and consent, on behalf of such Owner and such Owner's heirs, successors, legal representatives, successors-in-title and assigns, that from and after the date hereof the property of Owner described on Exhibit "A" attached hereto shall be owned, held, transferred, sold, conveyed, used, occupied, and encumbered subject to all of the terms, provisions, covenants, restrictions and easements contained in the Declaration. This 6<sup>th</sup> day of AUGUST, 2003.

OWNER: **ASHTON ATLANTA RESIDENTIAL, L.L.C.**, a Georgia limited liability limited company

By:

  
John Shankle, as Attorney-In-Fact pursuant to the Power of Attorney recorded at Deed Book 13369, page 2999, Cobb County, Georgia records

Signed, sealed, and delivered in the presence of:

  
WITNESS

  
NOTARY PUBLIC

My Comm.

[AFFIX NOTARY SEAL]

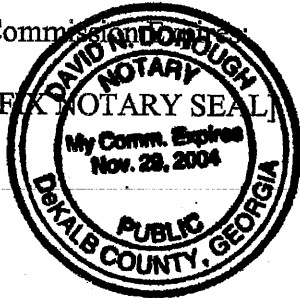


EXHIBIT "A"  
Description of Property

(Unit 2)

All that tract or parcel of land lying and being within Land Lot 1029 of the 17<sup>th</sup> District, 2<sup>nd</sup> Section of Cobb County, Georgia, as shown on that Release Plat for Ashton Atlanta Residential, L.L.C., Washington Mutual Bank, FA and United General Title Insurance Company, prepared by Watts & Browning Engineers, Inc., containing the seal of Larry R. Bollinger, Georgia Registered Land Surveyor No. 2361, dated May 20, 2003, and being more particularly described as follows:

Beginning at a point on the land lot line common to Land Lots 1029 & 1030 of said 17<sup>th</sup> District, 2<sup>nd</sup> Section, said point being located North 89°56'17" East, a distance of 745.99 from the Land Lot corner common to land lots 1011, 1012, 1029 & 1030. From the Point of Beginning thus established; proceed northeasterly along said land lot line common to land lots 1029 & 1030, North 89°56'17" East, a distance of 260.57 feet to a point; thence departing said land lot line, South 00°00'00" West for a distance of 85.69 feet to a point; thence South 90°00'00" West for a distance of 260.57 feet to a point; thence North 00°00'00" East for a distance of 85.41 feet to a point located on said land lot line common to land lots 1029 & 1030 and the Point of Beginning. Containing 22,291 square feet or 0.51173 Acres.

TOGETHER WITH,

(Unit 20)

All that tract or parcel of land lying and being within Land Lot 1029 of the 17<sup>th</sup> District, 2<sup>nd</sup> Section of Cobb County, Georgia, as shown on that Release Plat for Ashton Atlanta Residential, L.L.C., Washington Mutual Bank, FA and United General Title Insurance Company, prepared by Watts & Browning Engineers, Inc., containing the seal of Larry R. Bollinger, Georgia Registered Land Surveyor No. 2361, dated May 20, 2003, and being more particularly described as follows:

To find the point of beginning, commence at a point on the land lot line common to Land Lots 1029 & 1030 of said 17<sup>th</sup> District, 2<sup>nd</sup> Section, said point being located North 89°56'17" East, a distance of 745.99 from the Land Lot corner common to land lots 1011, 1012, 1029 & 1030; thence depart said land lot line, South 00°00'00" West, a distance of 85.41 feet to a point; thence South 90°00'00" West for a distance of 61.51 feet to a point; thence South 00°00'00" West for a distance of 22.00 feet to the True Point of Beginning. From the Point of Beginning thus established; proceed North 90°00'00" East, a distance of 209.25 feet to a point; thence South 00°00'00" West for a distance of 86.50 feet to a point; thence South 90°00'00" West for a distance of 209.25 feet to a point; thence North 00°00'00" East for a distance of 86.50 feet to the Point of Beginning. Containing 18,100 square feet or 0.41552 Acres.

EXHIBIT "B"

Additional Property Which May Be Unilaterally  
Submitted To This Declaration by Declarant

All that tract or parcel of land lying and being in Land Lots 1010, 1029, 1030, 1031, 1059, 1060 of the 17th District, 2nd Section, Cobb County, Georgia.