

Record and Return to:
Randall M. Lipshutz
Lipshutz Greenblatt LLC
1 West Court Square, Suite 700
Decatur GA 30030
404-688-2300

2015122859 DEED BOOK 25141 Pg 270

Filed and Recorded:
9/2/2016 3:17:39 PM
Debra DeBerry
Clerk of Superior Court
DeKalb County, Georgia
Georgia Intangible Tax Paid \$0.00
Real Estate Transfer Tax \$0.00

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

FAIRINGTON ENCLAVE PHASE II

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DECLARATION OF COVENANTS AND RESTRICTIONS**FOR****FAIRINGTON ENCLAVE PHASE II**

THIS DECLARATION, made on the date hereinafter set, by FOXDALE PROPERTIES, LLC, a Georgia limited liability company (hereinafter referred to as "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property lying and being in Land Lots 74 and 75 of the 16th District of DeKalb County, Georgia, a portion of which is more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Declarant intends to develop, construct, and build upon the Property a residential single-family, townhome community to be known as Fairington Enclave Phase II; and

WHEREAS, the Declarant has deemed it desirable to create an association (as hereinafter defined) for the purpose of maintaining portions of the Property and the improvements thereon and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Declarant has caused to be incorporated under the laws of the State of Georgia a nonprofit corporation called Fairington Enclave Phase II Homeowners Association, Inc. (hereinafter the "Association") to perform said functions for the common good and general welfare of the Owners (as hereinafter defined);

WHEREAS, the Declarant desires to subject the Property to the covenants, restrictions, easements, agreements, charges, and liens hereinafter set forth, each of which is for the protection and benefit of the Lots and Property, and for the benefit of all subsequent Owners of said Lots and Property, and each of which shall inure to the benefit of and run with each of said Lots.

NOW, THEREFORE, the Declarant hereby declares that the Property known as Fairington Enclave Phase II, and any such additions thereto as may hereafter be made pursuant to Article II hereof, is subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, occupied, used, mortgaged and otherwise encumbered subject to this Declaration of Covenants and Restrictions. Every grantee of any interest in any Lot made subject to this Declaration, by acceptance of a deed or other conveyance of such interest, whether or not it shall be so expressed in any such deed or conveyance, whether or not such deed or conveyance is signed by such person and whether such person shall otherwise consent in writing, shall take subject to all the terms and conditions thereof and shall be deemed to have assented to all said terms of this Declaration.

ARTICLE I

STATUTORY PROVISIONS AND DEFINITIONS

1.1 Definitions. Words used in this Declaration of Covenants and Restrictions shall have the following meanings, whether or not capitalized, and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "Act" shall mean the Georgia Property Owner's Association Act, O.C.G.A. § 44-3-230, *et seq.*, but the inclusion of this definition shall not be construed as submitting the Property to the Act, a separate amendment to this Declaration being required for such submission.

(b) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Fairington Enclave Phase II Homeowners Association, Inc., as amended from time to time.

(c) "Association" shall mean and refer to the Fairington Enclave Phase II Homeowners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

(d) "Board of Directors" or "Board" shall mean and refer to the duly elected Board of Directors of the Association, which is the governing body of the Association.

(e) "Bylaws of Fairington Enclave Phase II Homeowners Association, Inc." or the "Bylaws" shall mean and refer to those bylaws governing the administration and operation of the Association.

(f) "Common Areas" or "Common Property" shall mean and refer to all real and personal property, whether improved or unimproved, owned or leased by the Association or otherwise available to the Association for the benefit, use and enjoyment of its Members and shall include all improvements located therein or thereon and all utilities which serve the Property and are to be maintained by the Association. The Common Areas and Common Property shall include but not be limited to any and all fences, landscaping, lighting, walkways, parking areas, ponds and other improvements constructed by Declarant thereon.

(g) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

(h) "Community" shall mean and refer to all property which is now or may hereafter be made subject to the terms of the Declaration.

(i) "Cost Sharing Agreement" shall mean and refer to any Cost Sharing Agreement between the Association and Fairington Enclave Homeowners' Association, Inc., which may be entered into at some point in the future.

(j) "Declarant" shall mean and refer to the owner of the Property who has executed this Declaration. Declarant shall also mean any person or entity to whom Declarant transfers, in connection with a conveyance of one or more lots, the rights of Declarant set forth in this Declaration; provided, however, that there shall be only one Declarant at any time.

(k) "Declaration" shall mean and refer to the covenants, restrictions, and all other provisions as set forth in this entire document, and all amendments hereto recorded in accordance with this Declaration.

(l) "Director" shall mean and refer to a member of the Board of Directors.

(m) "Easement Areas" shall mean those areas shown as landscape maintenance easements, detention areas, drainage easements, or traffic islands, if any, on the final subdivision plats for the Property recorded by Declarant in the real property records of DeKalb County, Georgia.

(n) "Governing Documents" shall mean and refer to the Georgia Nonprofit Corporations Code, this Declaration, the By-Laws, the Articles of Incorporation, and such other rules and regulations promulgated by the Association hereunder.

(o) "Lot" shall mean and refer to any lots or portions of the Property which Declarant designated for separate ownership for the construction and occupancy of a single family residence as may be more particularly described in the Plats, and any additional parcels as may be added to the Property for separate ownership from time to time.

(p) "Majority" shall mean and refer to those eligible votes representing more than fifty percent (50%) of the eligible votes assigned to the Lots as provided in this Declaration or more than fifty percent (50%) of the Directors or members of committees appointed by the Board of Directors, as may be applicable.

(q) "Member" shall mean and refer to every individual, group of individuals, corporation, trust, or other legal entity, or a combination thereof, who holds membership in the Association.

(r) "Mortgage" shall mean and refer to a mortgage, deed to secure debt, deed of trust or other instrument conveying a lien upon or security title to a Lot or any portion of the Property.

(s) "Mortgagee" shall mean and refer to the holder, gaurantor, or insurer of a mortgage.

(t) "Occupant" shall mean any person occupying all or any portion of a Lot for any period of time regardless of whether such person is a tenant or the owner of such property.

(u) "Officer" shall mean and refer to an officer of the Association.

(v) "Owner" or "Lot Owner" shall mean and refer to any record title holder of a Lot within the Property (including Declarant), but shall not include a Mortgagee.

(w) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(x) "Plat" shall mean and refer to the plat(s) or survey of Fairington Enclave - Phase II as filed with the Clerk of Superior Court of DeKalb County, Georgia, as may be amended or revised from time to time.

(y) "Property" shall mean and refer to all real property described in Exhibit "A" attached hereto and made a part hereof that has been duly submitted to this Declaration.

(z) "Record" or "file for record" shall mean and refer to filing for record with the Clerk of Superior Court of DeKalb County, Georgia.

ARTICLE II

PROPERTY SUBMITTED TO THE DECLARATION

2.1 Property Subject to Declaration. The Property which is and shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration is located in DeKalb County, Georgia, and is more particularly described in Exhibit "A" to the Declaration as may be amended from time to time, and as shown on the Plats for Fairington Enclave - Phase II, recorded with the Clerk of Superior Court of DeKalb County, as may be amended from time to time.

2.2 Development of Additional Property. So long as Declarant, its successors and assigns, owns any Lot or any portion thereto to the Property, Declarant hereby reserves the right, but not the obligation, to submit Additional Property, as shown on Exhibit "B", or any portion or portions thereof to the provisions of this Declaration without further consent of the Association, and make those additions part of the Property upon filing a supplemental amendment to the Declaration in the real property records of DeKalb County, Georgia. Declarant also reserves the right, but not the obligation, to make improvements and changes to all parts of the Common Areas and any Lots owned by Declarant, including, without limitation, renovation and installation of and changes to utility systems and facilities, rearrangement and installation of security and refuse facilities, and work relating to building exteriors; provided, however, Declarant shall have no obligation to construct or complete any improvements on the Additional Property.

The only conditions and limitations are as follows:

(a) If improvements are made to any portion of the Additional Property which is added to the Property, the improvements to be made thereon shall be limited to residential Lots, driveways, patios, terraces, walkways, parking areas, utility systems, drainage areas and common facilities, or other improvements intended for the use or benefit of the Lot Owners.

(b) If any portion of the Additional Property is added to the Property, there are no limitations with respect to the location of any of the improvements that may be constructed thereon.

2.3 Common Areas. The Common Areas consist of all portions of the Property not located within the boundaries of a Lot. Common Area shall also include all easements across the Condominium Association property as provided in the Cost Sharing Agreement. The Common Areas shall remain undivided, and no Lot Owner or any other Person shall have the right to bring any action for partition or division of the whole or any part thereof except as provided in this Declaration. Each Lot Owner and the Association may use the Common Areas for the purposes for which they are intended, but no such use shall enter or encroach upon the lawful rights of the other Lot Owners.

2.4 Conveyance of Common Areas. The Declarant may from time to time convey real or personal property to the Association, or grant easements to the Association, at no expense to the Association and in accordance with this Article II, to be held by the Association as Common Area. The Association hereby covenants and agrees to accept from Declarant, and shall be deemed to automatically accept, all such conveyances of Common Area.

ARTICLE III

MEMBERSHIP

3.1 Voting Rights. The Association shall have two (2) classes of voting membership which shall be known as Class A and Class B:

(a) With the exception of the Declarant, every person, group of persons, corporation, partnership, trust, or other legal entity, or any combination thereof, who is record owner of a fee interest in any Lot which is part of the Property subject to the Declaration, or otherwise becomes subject to this Declaration by the terms of this Declaration as amended, shall be a Class A Member of the Association; provided, however, that any such person, group of persons, corporation, partnership, trust or other legal entity who holds such interest solely as security for the performance of a debt or obligation shall not be a Class A Member solely on account of such interest. Each Class A Member shall be entitled to one (1) vote for each Lot in which such member holds the interest required for Class A Membership and shall be entitled to vote on all matters upon which members

of the Association are entitled to vote pursuant to this Declaration, provided that there shall be only one (1) vote for each Lot irrespective of the number of Owners for such Lot.

(b) The Class B Member shall be the Declarant or its nominee or nominees, successors, and assigns, and shall include every person, group of persons, corporation, partnership, trust, or other legal entity, or any combination thereof, who shall obtain any Class B Membership by assignment from the Declarant which specifically assigns the rights of Class B Membership. The Class B Member or Members shall have one (1) Class B Membership for each Lot in which such member holds the interest otherwise required for Class A Membership. Each Class B Member shall be entitled to three (3) votes for each Class B Membership which it holds. Each Class B Membership shall lapse and become a nullity on the first to happen of the following events:

(i) The date on which the Lot to which the Class B membership attaches is occupied as a residence either by an Owner or by the tenant or designee of an Owner; or

(ii) Ten years from the date of the recording of this Declaration; or

(iii) Upon the surrender of said Class B Memberships by the then holder thereof for cancellation on the books of the Association. Upon lapse or surrender of any of the Class B Memberships as provided for in this paragraph, the Declarant or its successor in interest shall thereafter remain a Class A Member of the Association as to each and every Lot in which the Declarant then holds an ownership interest.

(iv) Class B Membership for a specific Lot may be transferred without requiring simultaneous transfer of the status as Declarant as long as Declarant retains title to at least one Lot.

(c) Both Class A and Class B Members are hereinafter referred to singularly as "Member" and collectively as "Members."

3.2 Declarant Control. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws, Declarant shall have the right to appoint and remove all of the members of the Board of Directors of the Association and any officer or officers of the Association until such time as Declarant loses its Class B status as described in Section 3.1(b) above.

ARTICLE IV

EASEMENTS

The easements described by this Article IV from each Lot Owner to each other Lot Owner and to the Association are hereby reserved and established.

4.1 Member's Right of Enjoyment. Subject to the easements and restrictions of record which affect or pertain to the Property and/or the Common Areas and Common Property (including any easement areas), every Member shall have a right and easement of enjoyment in and to the Common Areas, if any, and such easement shall be appurtenant to and shall pass with the fee title to every Lot subject to the following:

(a) The right of the Association, in accordance with the Governing Documents, and with the consent of a majority of the Owners of the Lots eligible to vote, to borrow money for the purpose of maintaining or improving the Common Areas in a manner designed to promote the enjoyment and welfare of the Members and in aid thereof to mortgage any of the Common Areas;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Property of the Association against Mortgage default and foreclosures; provided, however, that the same are in conformity with the other provisions of this Declaration;

(c) The right of the Association to adopt reasonable rules and regulations respecting use of the Common Areas and to reasonably limit the number of guests of Members who use any Common Areas which may be developed upon the Property;

(d) The right of the Association to suspend a Member's voting rights and the rights to use the Common Areas, if any, for any period during which any assessment remains unpaid and for a reasonable time for any infraction of any of the published rules and regulations of the Association;

(e) The right of the Association, acting by and through its Board of Directors, and after approval of the Owners of two-thirds (2/3) of Lots eligible to vote, by execution of a recordable document, to dedicate or transfer all or any part of the Common Areas to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed by the Board of Directors.

4.2 Delegation of Right of Use. Any Member may delegate his rights to the use and enjoyment of the Common Areas to the members of his family who reside permanently with him and to his tenants, contract purchasers who reside on the Property, and guests, all subject to such reasonable rules and regulations which the Association may adopt and uniformly apply and enforce.

4.3 Easements for Utilities and Related Purposes. The Association is authorized and empowered to grant (and shall from time to time grant) such other licenses, easements and rights-of-way over the Common Areas for sewer lines, water lines, electrical cables, telephone cables, gas lines, storm drains, cables, underground conduits and such other purposes related to the provision of utility services to the community as may be considered necessary and appropriate by the Board of Directors for the orderly maintenance, preservation and enjoyment of the Common Areas and the Easement Areas and for the preservation of the health, safety, convenience and welfare of the Owners of the Lots. This authority extends to the power to grant easements pursuant to any Cost Sharing Agreement entered into.

4.4 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment for maintenance and use of any permitted encroachment between adjacent Lots, and between each Lot and any adjacent Common Area due to unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to wilful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

4.5 Lateral Support. Every portion of the Common Area, every Lot, and any improvement which contributes to the lateral support of another portion of the Common Area or of another Lot shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

4.6 Additional Easement Rights. The Association shall have the right to enter upon the Common Areas and, to the extent required, to enter upon each Lot and any portion thereof for the purpose of (a) installing, maintaining, repairing or replacing sanitary or storm sewer lines, water lines and such other utilities as may be located under or cross under any such Lot or Lots; (b) repairing, maintaining or replacing the Common Areas or any improvements or structures located on the Common Areas; (c) repairing, maintaining or landscaping that portion of each Lot for which the Association has been given or may assume that responsibility or obligation; and (d) for those purposes an easement is hereby reserved in favor of the Association. Declarant specifically grants to the local water supplier, electric company, telephone company, and natural gas supplier non-exclusive easements across the Property for ingress and egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

4.7 Declarant's Rights. (a) There is hereby reserved for Declarant, so long as Declarant owns any Property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described.

(b) Declarant and its duly authorized agents, representatives, and employees shall have an easement for the maintenance of signs, a sales office, a business office, and model Lots on the Property, together with such other facilities and activities as in the opinion of Declarant may be reasonably required, convenient, or incidental to the completion, renovation, improvement, development, or sale of the Property. Declarant shall have a transferable easement on and over the Common Areas for the purpose of making contemplated improvements on the Property, and for the purposes of doing all things reasonably necessary and proper in connection therewith.

(c) Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees an easement over the Common Areas for the purpose of use and enjoyment, access, and development of any Additional Property, whether such property is made

subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas for construction and for connecting and installing utilities on such Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of the development of such Additional Property.

(d) The easements conferred by this section may not be terminated without the express written consent of Declarant and shall continue so long as Declarant owns any Lot primarily for the purpose of sale.

ARTICLE V

MAINTENANCE

5.1 Responsibilities of Owner. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of the Lots and dwellings, together with all other improvements thereon or therein on and within a Lot shall be the responsibility of the Owner of such Lot. Each Lot Owner shall be responsible for maintaining his Lot in a neat, clean, and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all dwellings, buildings and other structures, and all lawns, trees, shrubs, hedges, grass, and other landscaping. As provided in Section 8.22 hereof, each Lot Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any item which is the responsibility of such Lot Owner but which responsibility such Owner has failed to or refused to discharge.

5.2 Responsibility of Association. Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include the maintenance, repair, and replacement of (a) all walks, trails, parking lots, landscaped areas, water wells and irrigation systems, and other improvements made by Declarant or the Association situated within the Common Areas or within easements encumbering Lots, pursuant to this Declaration; (b) such security systems and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility, or other person; and (c) all lawns, trees, shrubs, hedges, grass and other landscaping and all ponds or detention areas situated within or upon the Common Areas. The Association shall not be liable for injury or damage to any person or property (1) caused by the elements or by any Lot Owner or any other person, (2) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas, (3) caused by any 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, or (4) to the interior of any structure which occurs due to a failure of a portion of the structure which the Association is required to maintain if said damage occurs prior to notice by the Lot Owner to the Association of a maintenance issue and prior to when the Association has had a reasonable time in which to conduct any exterior repair. Nor shall the Association be liable to any Lot Owner for loss or damage, by theft or otherwise, of any property of such Lot Owner which may

be stored in or upon any portion of the Common Areas or any other portion of the Property. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Lot Owner.

5.3 Failure to Maintain. If the Board of Directors or the AERC determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair or replacement of items of which he or she is responsible hereunder, then, the Association shall give the Lot Owner written notice of the Lot Owner's failure or refusal and of the Association's right to provide such necessary maintenance, repair or replacement at the Lot Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary by the Board of Directors or the AERC.

Unless the Board of Directors determines that an emergency exists, the Lot Owner shall have ten (10) days from the date of the notice within which to complete the maintenance or repair, or, if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board determines that: (i) an emergency exists or (ii) that an Lot Owner has not complied with the demand given by the Association as herein provided, then, the Association may provide any such maintenance, repair or replacement at the Lot Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Lot Owner is subject, shall become and be a lien against the Lot, and shall be collected as provided herein for the collection of assessments.

If the Board determines that the need for maintenance or repair is in the area of common responsibility and is caused through the willful or negligent act of any Lot Owner or Occupant, or their family, guests, lessees or invitees, then, the Association may assess the cost of any such maintenance, repair or replacement against the Lot Owner's or Occupant's Lot, and such cost shall become a lien against the Lot and shall be collected as provided herein for the collection of assessments.

5.4 Insurance Deductibles. If maintenance is required as the result of an insured loss, the amount of the deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such repair in the absence of such insurance. If the loss affects more than one Lot, or a Lot and the Common Areas, the cost of the deductible shall be apportioned among the parties suffering loss in accordance with the total cost of repair.

ARTICLE VI

ASSESSMENTS

6.1 Creation of Lien and Personal Obligation. Each Owner of a Lot covenants and agrees to pay to the Association annual and special assessments or charges provided by this Declaration. All such assessments and other charges shall, from the time they become due and payable, be a charge against and continuing lien upon the Lot in favor of the Association and for the benefit of all Lot Owners. Each assessment or charge shall also be the personal obligation of the Lot Owner. No Lot Owner may waive or otherwise escape liability for such assessments for non-use of the Common Areas or abandonment of the Lot. Each Lot Owner shall be liable for each assessment coming due while he is a Lot Owner, and any subsequent Owner of the Lot shall be jointly and severally liable for any assessment or portion thereof as may be due and payable at the time of conveyance to the subsequent Lot Owner. The rights of any subsequent Lot Owner to recover from the prior Lot Owner any amounts due by the prior Lot Owner and paid by the subsequent Lot Owner shall not be prejudiced. In the event that the holder of a mortgage of record or other person acquires title to any Lot as a result of foreclosure of a first priority or secondary purchase money mortgage (provided that neither the grantee nor any successor grantee on any such secondary money mortgage was the seller of the Lot), such purchaser at the foreclosure sale or such mortgagee, as the case may be, his or its successors, successors in title and assigns, shall not be liable for, nor shall such Lot be subject to a lien for, any assessment or charge hereunder chargeable to such Lot on account of any period prior to such acquisition of title; provided, however, that such unpaid share of an assessment or assessments shall be deemed to be common expenses collectible from the Owners of all Lots, including the Lot acquired at the foreclosure sale.

6.2 Annual Maintenance Assessments. Except as otherwise provided herein, each Lot is hereby allocated equal liability for common expenses, and the amount of all common expenses not specially assessed pursuant to the provisions of this Declaration, less the amount of all undistributed and unreserved common profits, shall be assessed against the Lots in equal proportion. The annual assessment payable by the Lot Owners shall be levied by the Board of Directors. During the year commencing with the first day of the month of the effective date of this Declaration, the annual assessment applicable to each Lot shall be as set forth in the budget for the Association delivered to each purchaser of a Lot. Not later than thirty (30) days before the Association's annual meeting and not later than the end of the fiscal year of the Association, the Board of Directors of the Association shall prepare an estimated budget of the common expenses for the ensuing fiscal year, and the Board shall submit the budget in writing to the Members, as provided in the By-Laws, together with notice of the amount of the annual assessment based on such budget payable by each Lot Owner during the new fiscal year. If for any reason an annual budget is not made as required hereby, a payment in the amount required by the last prior annual assessment shall be due and payable in the manner set forth in the prior budget until changed by a new assessment. The annual budget submitted by the Board shall become effective unless disapproved by a vote of the majority of the total Association membership.

If the estimated budget proves inadequate for any reason, then the Board of Directors may levy at any time a further assessment against the Lot Owners and notify the Owners accordingly. Except for special assessments which may be levied under Section 5.3 of this Article, no special assessment levied by the Board made necessary by an inadequate budget, which special assessment

averages in excess of \$250.00 per Lot in any fiscal year, shall go into effect unless approved by a majority of the eligible vote of the Lot Owners.

Common expenses shall include, but not limited to, the following:

(a) The cost of all operating expenses of the Common Areas, the Easement Areas, and the services furnished to or in connection with the Common Areas and Easement Areas, including charges by the Association for any services furnished by it;

(b) The cost of management and administration of the Common Areas, including fees to any Management Agent;

(c) The amount of all taxes and assessments levied against the Common Areas;

(d) The cost of hazard and liability insurance on the Common Areas and the cost of such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Lot Owners;

(e) The cost of utilities and other services which may be provided by the Association or for which the Association shall be responsible to maintain or repair for the Common Areas, and the maintenance, replacement or repair of such utilities;

(f) The cost of maintaining, replacing, repairing and landscaping the Common Areas and the Easement Areas, if any, including, without limitation, maintenance of any storm water detention basins or ponds or the like located upon the Common Areas, the cost of maintaining, repairing and landscaping any portion of the Lots as required by this Declaration, the cost of maintenance of all easements, entrance features and monuments, fences, irrigation systems, lighting, landscaping, pathways, traffic islands or walkways upon the Property and providing access to the Property to the extent required by any easements, restrictions or agreements of record which require such contribution by the Declarant, its predecessors in title, its successors in title, together with such equipment as the Board of Directors shall determine to be necessary and proper in connection therewith;

(g) The cost of funding all reserves, including insurance deductibles, established by the Association, including, when appropriate, a general operating reserve and a reserve for replacements;

(h) The expenses of administration of the Association, including management, legal and accounting fees;

(i) Charges for any utilities or services provided to the Lots and not separately metered; and

(j) Such other charges as may be determined from time to time by the Board of Directors to be common expenses, including, without limitation, taxes and governmental charges not separately assessed against each Lot.

(k) Such charges as may be due to neighboring Associations under the terms of any Cost Sharing Agreement.

Each Lot Owner shall be obligated to pay such assessments to the Association in such reasonable manner as the Board of Directors shall designate. Upon resolution of the Board, annual assessments may be levied and collected on a monthly, quarterly or semi-annual basis rather than on the annual basis hereinabove provided for. In any year in which there is an excess of assessments and other income over expenditures, such excess shall appertain to the Lots according to their proportionate share of common expenses, and the Board of Directors, by resolution and without the necessity of a vote of the Lot Owners, shall determine either to apply such excess or any portion thereof against and reduce the subsequent year's assessment or to allocate the same to one or more reserve accounts of the Association described herein. In the event that the Association acquires title to any Lot, the Association shall be exempt from all assessments during the period of its ownership thereof.

6.3 Special and Specific Assessments. In addition to the regular maintenance assessments authorized by this Article, or the special assessment authorized in Section 6.2 above, the Association may levy in any fiscal year a special maintenance assessment or assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or inordinate repair or replacement of any improvement located upon or forming a part of the Common Areas, including the necessary fixtures and personal property relating thereto, or for such other purposes as the Board of Directors may consider appropriate; provided that any such assessment shall have the assent of a majority of the Members representing two-thirds (2/3) of the Lots eligible to vote.

Any common expenses occasioned by the conduct of any Lot Owner or any family member, tenant, guest, licensee, or invitee of any Owner shall be specifically assessed against such Owner's Lot or Lots. Any common expenses of the Association benefitting less than all of the Lots or significantly disproportionately benefitting all of the Lots shall be assessed equitably among the Lots so benefitted; provided, however, nothing in this Section shall permit the Association to specially or disproportionately allocate common expenses for periodic maintenance, repair and replacement of any portion of the Common Areas or Easement Areas or other portions of the Property which the Association has the obligation to maintain, repair or replace. It is intended that water and sewer shall be separately metered and billed to each Owner by the providing governmental authority (please confirm). However, if the Association at some point becomes responsible for paying for water and sewer service to the Lots as a shared expense, the Association shall have the authority to individually meter the water and sewer usage by all Lots, and may charge each Lot as a special assessment the actual cost to the Association of water and sewer provided to that Lot. Any expense relating to an optional service provided by or through the Association may be specially assessed against those Lots utilizing such service. The special assessments provided for in this Section shall be levied by the

Board of Directors, and the amount and due date(s) of such special assessments so levied shall be as specified by the Board.

6.4 Reserves for Replacements. The Association shall establish and maintain a reserve fund for the purpose of effecting the replacement of improvements on the Common Areas and the Easement Areas, or major repairs or replacements necessary to any parking areas or sidewalks developed as part of the Property or providing access to the Property, equipment replacement, insurance deductibles, and for start-up expenses and operating contingencies of a non-recurring nature relating to the Common Areas and Easement Areas. The Association may establish such other reserves for such other purposes as the Board may from time to time consider to be necessary or appropriate. Such fund(s) shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the State of Georgia or by any agency of the United States of America, or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The proportional interest of any Owner in any such reserves shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

6.5 Non-Payment of Assessments; Remedies of Association. If any assessment, or portion thereof, is not paid within thirty (30) days after the due date, then a late charge, not in excess of the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each delinquent assessment or installment shall also be included in the lien and shall be due and payable to the Association. The lien for assessments shall also include interest at a rate of fifteen percent (15%) per annum on any assessment, installment, delinquency or late charge from the date such sum was first due and payable. Should the Property be submitted to the Act, the maximum amount of charges and interest provided herein shall automatically be adjusted to the maximum amounts allowed by the Act. The lien for assessments shall further secure costs of collection, including court costs, the expenses of sale, any expenses required for the protection and preservation of the Lot, and reasonable attorneys' fees actually incurred. The lien for assessments shall also include the fair rental value of the Lot from the time of the institution of suit until the sale of the Lot at foreclosure or until the judgment rendered in such suit is otherwise satisfied. If any delinquent assessment or portion thereof is not paid within ten (10) days after written notice is given to the Lot Owner to make such payment, the entire unpaid balance of the assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full, and foreclosure proceedings may be instituted to enforce such lien. Such notice shall be sent by certified mail, return receipt requested, to the Lot Owner both at the address of the Lot and at any other address or addresses the Lot Owner may have designated to the Association in writing, specifying the amount of the assessments then due and payable, together with authorized late charges and interest accrued thereon. All actions for the collection of such assessments by suit, judgment and foreclosure of the aforesaid lien shall be brought in the same manner as other liens for the improvement of real property; provided, however, if the Property is submitted to the Act, actions may include foreclosure rights as provided for in the Act. The Board of Directors, acting on behalf of the Association, shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, encumber and convey the same. The lien for

assessments shall lapse and be of no further effect as to assessments or installments thereof, together with late charges and interest applicable thereto, first becoming due and payable more than four (4) years prior to the institution of suit therefor. The Board of Directors of the Association may suspend the voting rights of a Lot Owner and the rights of the Lot Owner to use certain of the Common Areas and Easement Areas during the period in which any assessment or portion thereof remains unpaid and after at least ten (10) days' notice is given to the Lot Owner in the manner aforesaid.

6.6 Evidence of Payment. Any Lot Owner, mortgagee of a Lot, person having executed a contract for the purchase of a Lot, or lender considering the loan of funds to be secured by a Lot shall be entitled upon request to a statement from the Association or its management agent setting forth the amount of assessments past due and unpaid (with late charges and interest applicable thereto) against that Lot. Such request shall be in writing, delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. Failure on the part of the Association to mail to the address specified in such request or otherwise furnish such a statement within five (5) business days from the receipt of such request shall cause the lien against the specified Lot for assessments which are, as of the expiration of such five day period, due and payable to be extinguished and of no further force or effect as to the title or interest acquired by the purchaser or lender, as the case may be, and successors and assigns, in the transaction contemplated in connection with such request. The information specified in such statement shall be binding upon the Association and every Lot Owner. Payment of a fee of Twenty Five Dollars (\$25.00), which shall accompany such request, shall be required as a prerequisite to the issuance of such a statement. Should the Property be submitted to the Act, the maximum amount which may be charged for a statement of account shall automatically be adjusted to the maximum amount allowed by the Act. Should a request be made for information beyond the amount of assessments past due and unpaid, an additional reasonable fee for providing that information may be charged.

6.7 Priority of Lien. The lien created by this Article shall be prior and superior to all other liens except only (a) the lien for ad valorem taxes on the Lot, (b) the lien of any first priority mortgage, (c) the lien of any secondary purchase money mortgage to which the Lot is subject, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the Lot, and (d) the lien of any mortgage recorded prior to the recording of this Declaration.

6.8 Exempt Property. No portion of the Common Areas shall be subject to assessment of any kind by the Association.

6.9 Declarant's and Class B Member's Obligation for Assessments.

(A) So long as Declarant owns any property which is subject to the Declaration or which may be unilaterally subjected to this Declaration by the Declarant, Declarant may annually elect either to pay an amount equal to regular assessments on all its unsold Lots, or to pay the difference between the amount of the assessment levied on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during

the immediately preceding fiscal year. The Declarant's obligations may be satisfied in the form of cash or by "in kind" contributions of services and materials, or by a combination of these.

(B) As to any Lot owned by a Class B Member who is not the Declarant, assessments shall commence with the first fiscal year following conveyance of an undeveloped Lot to a designated Class B Member. If the Lot Owner maintains its Class B Membership as of the first day of the fiscal year, assessments chargeable to that Lot for the fiscal year shall be one-half of the assessments chargeable to the Lot of a Class A Member. If during the fiscal year the Lot Owner loses its Class B Membership, the assessment for the lot shall be increased by prorating the remainder of the year to full Class A Membership assessments.

6.10 Transfer Fee. Upon the sale or transfer of all ownership interest in a Lot to a new Owner who is not a Class B Member, the Association shall be entitled to collect from the new Owner a non-refundable contribution to the working capital funds of the Association in the amount of two (2) times the monthly assessment chargeable to the Lot on the date of transfer. The transfer fee shall be in addition to any other assessments due under other provisions of this Declaration. For purposes of this subparagraph, the transfer of an undivided interest to an immediate family member shall not require a transfer fee. For purposes of this subparagraph, a transfer by operation of law upon the death of an Owner shall not require a transfer fee; provided, however, that a transfer fee of \$100 shall be payable upon the filing of a deed of assent by the estate of a deceased Lot Owner, and a full transfer fee shall be required upon other disposition of a Lot by the estate of a deceased Owner. If a series of transfers to someone not an immediate family member results in the termination of all ownership interest of an individual, a transfer fee shall be collectible at the time of the last partial transfer. For purposes of this subparagraph, the acquisition by a Mortgagee holding a first Mortgage of record on a Lot who acquires title to that Lot by judicial or non-judicial foreclosure of the Mortgage shall not trigger liability for a transfer fee at the time of the acquisition; however, a transfer fee shall be due upon disposition of the Lot by the acquiring Mortgagee.

ARTICLE VII

ADMINISTRATION

7.1 Administration of the Association. Subject to the provisions hereinafter set forth in this Article, the administration of the Association, the maintenance, repair, renovation, replacement and operation of the Common Areas, and other duties imposed upon the Association by the Governing Documents shall be the responsibility of the Association, and the exercise of the powers and duties of the Association shall be in accordance with the Governing Documents.

7.2 Duties and Powers. The duties and powers of the Association shall be those set forth in the Governing Documents, together with those reasonably implied to effect the purposes of the Association. Except to the extent otherwise required by the Governing Documents, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors, acting through its officers, without any further consent or action on the part of the Lot Owners. Subject to and in accordance with the provisions and limitations set forth in the By-Laws of the Association,

each Director and each Officer of the Association shall be entitled to be indemnified by the Association in connection with any threatened, pending or completed action, suit or proceeding with respect to which such person was or is a party by reason of the fact that such person is or was a Director or Officer of the Association. In addition to all other powers set forth in the Governing Documents, the Board of Directors shall have the power to:

- (a) designate, hire and dismiss the personnel necessary for the operation of the Association and the maintenance, repair and replacement of the Common Areas, Association property and the area of common responsibility, and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties;
- (b) borrow money for the purpose of performing maintenance, repair, restoration or improvement of the Common Areas and Easement Areas and for other purposes, with approval of a majority of the members of the Association;
- (c) grant permits, licenses, utility easements, and other easements over, through and under the Common Areas without a vote of the Owners; and
- (d) acquire, hold and dispose of tangible and intangible personal property and real property.

7.3 Property. All funds received and title of all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring the same, shall be held for the benefit of the Lot Owners as herein provided and for the purposes herein stated. The shares of the Lot Owners in the funds and assets of the Association cannot be individually assigned, hypothecated or transferred in any manner except as an appurtenance to a Lot.

7.4 Rules and Regulations. Reasonable regulations, rules and requirements concerning the use of the Lots, appurtenances thereto, and the Common Areas and Easement Areas may be made and amended from time to time by the Board of Directors of the Association, provided that copies of such regulations, rules and requirements and amendments thereto shall be furnished by the Association to all Lot Owners. Such regulations, rules and requirements shall be binding upon and shall be complied with by the Lot Owners, their families, tenants, guests, invitees and agents, until and unless any such regulation, rule or requirement is specifically overruled and canceled in a regular or special meeting by the vote of Lot Owners holding a majority of the total votes in the Association. Failure to abide by any such regulation, rule or requirement shall be grounds for an action by the Association and any aggrieved Lot Owner to recover damages or obtain injunctive and equitable relief or both and shall entitle the Association to assess reasonable fines and to any other remedies provided by this Declaration.

7.5 Management Agent. The Board of Directors may employ on behalf of the Association a management agent or manager (the "Management Agent") at a rate of compensation

established by the Board of Directors to perform such duties and services as the Board of Directors shall from time to time authorize in writing, including, without limitation:

- (a) To establish (with the approval of the Board) and provide for the collection of the annual maintenance assessments and any other assessments provided for in this Declaration and to provide for the enforcement of liens therefor in a manner consistent with law and the provisions of this Declaration;
- (b) To provide for the care, upkeep, maintenance and surveillance of the Common Areas and the Easement Areas;
- (c) To designate, hire and dismiss such personnel as may be required for the good working order, maintenance and efficient operation of the Common Areas and the Easement Areas;
- (d) To promulgate (with the approval of the Board of Directors) and enforce such rules and regulations and such restrictions or requirements, "house rules" or the like as may be deemed proper respecting the use of the Common Areas; and
- (e) To provide such other services (including accounting services) for the Association as may be consistent with law and the provisions of this Declaration.

Any management agreement entered into by the Association shall provide, *inter alia*, that such agreement may be terminated with or without cause by either party upon thirty (30) days' written notice thereof to the other party. The term of any such management agreement shall not exceed one (1) year; provided, however, that the term of any management agreement may be renewable by mutual agreement of the parties for successive one-year periods.

7.6 Limitation of Liability. The Association shall not be liable for the failure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to individuals or property or Lots caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas, or the Easement Areas, or from any wire, pipe, drain, conduit or the like. The Association shall not be liable to any Member for loss or damage, by theft or otherwise, for articles which may be stored upon the Common Areas or the Easement Areas. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or the Easement Areas, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

ARTICLE VIII

ARCHITECTURAL REVIEW AND USE RESTRICTIONS

To assure a community of congenial Owners and thus protect the value of the Lots, the Property, including all improvements comprising a part thereof, shall be subject to the restrictions set forth in this Article VIII and in the published rules and regulations of the Association. Each Owner of a Lot shall be responsible for ensuring that the Lot Owner's family, guests, tenants, and occupants comply with all provisions of the Governing Documents and the rules and regulations of the Association. In addition to any rights the Association may have against the Lot Owner's family, guests, tenants, or occupants, as a result of such person's violation of the Governing Documents or the rules and regulations, the Association may take action under this Declaration against the Lot Owner as if the Lot Owner committed the violation in conjunction with the Lot Owner's family, guests, tenants or occupants.

8.1 Architectural and Environmental Review Committee. The Board of Directors shall appoint an Architectural and Environmental Review Committee (the "AERC" or "Committee"), comprised of three (3) or more natural individuals designated from time to time by the Board of Directors. The AERC is hereby authorized to promulgate, with the approval of the Board of Directors, from time to time, written architectural standards, policies, and guidelines (hereinafter, the "Design Standards") governing the construction, location, landscaping, and design of improvements on the Lots as it may consider necessary or appropriate, the contents and submission of plans and specifications, and other information required to evidence compliance with and obtain approval pursuant to Section 8.2 below. Any Design Standards published by the AERC and approved by the Board shall be binding and enforceable on all Owners with respect to all improvements in the Property requiring the approval of the AERC. No such rules, regulations, statements, criteria, standards or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. The affirmative vote of a majority of the members of the AERC and the Board shall be required in order to adopt or promulgate any rule or regulation, or to make any finding, determination, ruling or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Article. The AERC, with the approval of the Board, is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the AERC in performing its functions set forth herein.

8.2 Architectural Approval. To preserve the architectural and aesthetic appearance of the Property, no construction or repair of any nature whatsoever shall be commenced or maintained by any Lot Owner with respect to or affecting the exterior appearance of any dwelling located on any Lot or with respect to any other portion of the Property, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, decks, patios, courtyards, playhouses, walls, fences, exterior lights, sculpture or yard art, home additions, garages, porch or patio enclosures, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface) unless and until two (2) copies of the plans and specifications and related data

(including, if required by the AERC, a survey showing the location of all property lines, buildings, structures, fences, trees of six (6) or more inches in diameter at a height of four (4) or more feet, and other significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, and location of same and such other information as reasonably required by the AERC shall have been submitted to and approved in writing by the AERC as to the compliance of such plans and specifications with this Declaration and such Design Standards as may be published by the AERC and approved by the Board of Directors from time to time, including the harmony of external design, location and appearance in relation to surrounding structures and topography.

One copy of such plans, specifications and related data so submitted shall be retained in the records of the Association, and the other copy shall be returned to the Owner marked "approved," "approved as noted," or "disapproved." The AERC may establish and charge a fee to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, inspectors, attorneys, or similar professionals retained in accordance with this Article. Notwithstanding the foregoing, an Owner may make interior improvements and alterations within his dwelling that do not affect the exterior appearance without the necessity of approval or review by the AERC, as long as no structural changes are made to the building's interior. Upon approval of plans and specifications, no further approval under this Article VIII shall be required with respect thereto unless required by Section 8.3 below or unless such plans and specifications are materially altered or changed. Refusal of approval of plans and specifications may be based by the AERC upon any ground which is consistent with the objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

The decision of the AERC shall be final except that any Member who is aggrieved by an action or forbearance from action by the AERC (or by any policy, standards or guidelines established by the AERC) may within thirty (30) days from the date of such decision, action or forbearance from action, appeal the decision of the AERC to the Board of Directors. Upon such request, the Member shall be entitled to a hearing before the Board of Directors. The decision of the Board of Directors shall be final. The AERC, the Board of Directors, and representatives of the AERC or Board shall have the right during reasonable hours to enter upon and inspect any Lot or improvements in connection with the approval process or after the construction or alteration is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the AERC fails to approve or disapprove in writing any proposed plans and specifications within thirty (30) days after complete plans and specifications (and all other materials and information reasonably required by the AERC) have been submitted to the AERC, such plans and specifications will be deemed to have been expressly approved, provided the proposed improvements and alterations are generally in harmony with the scheme of the Property as set forth in this Declaration and the Design Standards.

8.3 Limitations. Construction or alterations in accordance with plans and specifications approved by the AERC pursuant to the provisions of this Article shall be commenced within six (6) months following the date upon which the same are approved by the AERC (whether by affirmative approval or by forbearance from action as specified in Section 8.2, above) and shall be substantially

completed within twelve (12) months following the date of commencement, or within such other period as specified or approved by the AERC. In the event construction or alteration is not commenced within the period aforesaid, then approval of the plans and specifications by the AERC shall be conclusively deemed to have lapsed, and compliance with the provisions of this Article shall again be required. There shall be no deviation from the plans and specifications approved by the AERC without prior consent in writing from the AERC. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the AERC to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance. In no event shall the approval of plans and specifications or the promulgation of Design Standards be construed as representing or guaranteeing that any construction, alteration or modification was constructed or installed in accordance with applicable state, county or municipal zoning, building codes or building restrictions or that such construction or alteration shall be completed in a good and workmanlike manner or be suitable for any particular purpose. Neither the Association nor the AERC shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved pursuant to the terms of this Article, any loss or damages to any person arising out of the approval or disapproval of any plans and specifications, any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances, codes or regulations, nor defects in construction undertaken pursuant to such plans and specifications.

8.4 Certificate of Compliance. Upon completion of any construction or alteration or other improvement to a Lot in accordance with plans and specifications approved by the AERC, the AERC shall, at the request of the Owner of such Lot, issue a certificate of compliance, which shall be prima facie evidence that such construction, alteration or other improvement referenced in such certificate has been approved by the AERC and constructed or installed in full compliance with the provisions of this Declaration.

8.5 Use of Lots. Each Lot shall be restricted exclusively to single-family residential use, and no trade or business of any kind may be conducted in or from a Lot or any part of the Property, except that the Owner or Occupant residing in a Lot may maintain a professional office and/or conduct ancillary business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the Lot, except for such signage as allowed under Section 8.13; (b) the business activity does not involve visitation of the Lot by employees, clients, customers, suppliers or other business invitees in a greater volume than would normally be expected for guest visitation to a residential Lot without business activity; (c) the business activity conforms to all zoning requirements for the Property; (d) the business activity does not increase traffic in the Property in excess of what would normally be expected for residential Lots in the Property without business activity; (e) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage; (f) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as determined in the Board's sole discretion; and (g) the business activity does not result in a materially greater use of Common Areas or Association services.

The terms "business" and "trade," as used herein, shall have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the use of a Lot by an on-site management agent operating on behalf of the Association shall not be considered a trade or business within the meaning of this subparagraph.

If an Owner of a Lot is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing to the Board of Directors the name(s) of the person(s) who are authorized to occupy the Lot. The designated person(s) to occupy the Lot may not be changed more frequently than once every six (6) months. If the designated person(s) occupying the Lot do not hold more than a 25% equity interest in the profits and losses of the entity, are not a primary beneficiary of a trust holding title, or are not a full time, compensated employee of the legal entity, the occupancy shall be considered a lease and shall comply with the leasing restrictions contained in this Declaration.

8.6 Prohibited Activities. No noxious or offensive trade or activity shall be carried on at or within any Lot, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or other Owners. Each Lot Owner, his family, visitors, invitees, guests, servants and agents shall refrain from any act or use of his Lot or the Common Areas which could reasonably endanger the health or safety or cause embarrassment, discomfort, annoyance or nuisance to the Occupants of the Lots, or which could result in the cancellation or insurance on any Lot or any portion of the Common Areas, or which would be in violation of any law or governmental code or regulation. 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 on any portion of the Property. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights.

8.7 Nuisances. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property, except in containers specially designated for such purpose, nor shall any odors be permitted so as to render any portion of the Property unsanitary, unsightly, offensive or detrimental to persons using or occupying other portions of the Property. No burning of trash and no accumulation or storage of litter, lumber, scrap metals, bulk materials, waste, or new or used building materials shall be permitted in any Lot. No nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to persons using or occupying other portions of the Property. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells sirens, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Property. Any Lot Owner, or his family, servants, agents, invitees, or guests who shall dump or place any trash or debris upon any portion of the Property, except in the containers described above, shall be liable to

the Association for the actual cost of the removal thereof or the sum of \$25.00, whichever is greater, and the same shall be added to and become part of that portion of any assessment next coming due to which the Lot Owner is subject.

8.8 Pets. No animals, birds or reptiles, other than generally recognized household pets, shall be kept or maintained on any portion of the Property, and then, only if they are kept or maintained solely as domestic pets and not for commercial purposes. The Board of Directors shall have the authority to prohibit animals determined in the Board's sole discretion to be dangerous. No animal, bird or reptile shall be allowed to make an unreasonable amount of noise or to become a nuisance. All dogs shall be on a leash and under the physical control of a responsible person at all times while outside the boundaries of the Lot where the animal resides. Feces left on any portion of the Property other the Lot where the animal resides by any household pet must be removed by the owner of the pet or the person responsible for the pet. Pets shall be registered, licensed and inoculated as may from time to time be required by law. The Board of Directors shall have the authority to adopt such additional rules and regulations regarding pets as it may from time to time consider necessary or appropriate.

8.9 Motor Vehicles and Parking. Except as herein elsewhere provided, no buses, mobile homes, motor homes, trucks with a load capacity of one (1) ton or more, vans (excluding mini-vans or sport utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), truck campers, trailers of any kind, boats or other similar machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any Lot, and except for such equipment and machinery as the Association may reasonably require in connection with the maintenance and operation of the Common Areas) shall be kept, placed, stored, maintained or operated upon any portion of the Property. The Board of Directors may prohibit motorcycles, motorized bicycles, motorized go-carts and other such contrivances, or any of them, from being kept, placed, stored, maintained or operated upon any portion of the Property if, in the opinion of the Board of Directors, such prohibition shall be in the best interests of the community.

In amplification of provisions elsewhere set forth in this Declaration, the Board of Directors shall have the power and authority to establish reasonable rules and regulations governing the parking of vehicles on the Property. Specifically, the Board of Directors may restrict the number of vehicles that can be parked on the Property and/or issue parking stickers or decals to authorized vehicles; provided, however, that each Lot must be assigned at least two (2) parking stickers or decals. Vehicles shall not be parked on the street for an extended period of time or on a regular basis. Further, vehicles shall never be parked on any lawn or sidewalk.

Abandoned, disabled, and stored vehicles are prohibited from being parked on the Property, except that such vehicles may be stored within an enclosed garage on any Lot. Provided that all applicable provisions of state law and local ordinances are complied with, and provided that the offending vehicle is posted with a notice of possible future towing at the time of the initial parking violation by the vehicle, the Board shall have the express authority to tow vehicles from the Property

if found to be in violation of said rules and regulations. If a vehicle is towed due to violation of this Declaration or the rules and regulations adopted by the Board, 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. For purposes of this Section, "abandoned vehicle" shall mean a vehicle that is both (a) obviously inoperable or does not have a current operating license plate and (b) remains parked for fourteen (14) days. "Stored vehicle" shall mean any vehicle other than an abandoned vehicle which remains parked in the same spot for fourteen (14) days or which is put on blocks or covered with a tarpaulin and remains on blocks or covered overnight.

8.10 Trash, Garbage and Recycling Containers. Trash, garbage and recycling containers shall not be permitted to remain in public view except on the days of trash collection and recycling collection. No incinerator shall be kept or maintained upon any portion of the Property. Garbage, trash and other refuse shall be placed in covered containers specially designed for such purpose.

8.11 Utility Hoses & Pipes. Except for hoses and the like which are reasonably necessary in connection with normal lawn maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, television cable or similar transmission line shall be installed or maintained above the surface of the ground.

8.12 Temporary Structures & Outbuildings. No structure of a temporary character, and no trailer, shack, barn, pen, kennel, run, stable, shed or other outbuilding shall be erected, used or maintained on the Property at any time, except as approved in writing by the AERC or the Board of Directors.

8.13 Signs. Except for entrance signs, directional signs for vehicular or pedestrian control or safety, signs for community "theme area" signs, and such other promotional signs as may be maintained by the Association, and except as may be required by legal proceedings, no signs or advertising posters of any kind nor any banners, pennants, flags, and the like shall be maintained or permitted on any portion of the Property without the prior express written consent of the Board of Directors; provided, however, that one (1) temporary "For Sale" or similar real estate sign not exceeding six (6) square feet in area may be erected upon any Lot placed on the market for sale; provided further that any such temporary "For Sale" or similar real estate sign shall be removed promptly following the sale of such Lot. The restriction herein stated shall include the prohibition of the placement of any sign in or upon any motor vehicle while the same is upon the Property. The Board of Directors may establish standards for any permitted signs, posters, banners, pennants, or flags upon the Property, and there shall be no deviation from such standards without the prior written consent of the Board of Directors.

8.14 Easements. No structure, planting or other material (except as erected or planted by Declarant) shall be placed or permitted to remain upon any portion of the Property which may damage or interfere with any easement for the installation or maintenance of utility easements or easements for use of ingress and egress, or which may unreasonably change, or obstruct ingress and egress, or may unreasonably change, obstruct, or retard direction or flow of any drainage channels.

8.15 Antennas & Satellite Dishes. No exterior antenna, receiving dish or similar apparatus of any kind for the transmission or reception of television signals, radio signals, or any form of electromagnetic radiation shall be erected, used, or maintained outdoors on any portion of the Property, whether attached to a building or structure or otherwise unless approved in accordance with the provisions of Section 8.2 hereof; provided, however, that 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 (1) meter or less in diameter or diagonal measurement; (b) antennas designed to receive video programming services via multi-point distribution services that are one (1) meter or less in diameter or diagonal measurement; or (c) antennas that are designed and intended to receive television broadcast signals via multi-point distribution services that are one (1) meter or less in diameter or diagonal measurement; and, provided further, that the Association may adopt such additional rules and regulations that are consistent with state and federal law concerning the installation of satellite dishes on the Property.

8.16 Common Areas. No Owner shall make any private or exclusive or proprietary use of any of the Common Areas except with the specific approval of the Board of Directors or its designated agent, and then only on a temporary basis. No Owner shall engage or direct any employee of the Association to do any private business of the Owner during the hours such employee is employed by the Association, nor shall any Owner direct, supervise or in any manner attempt to assert control over any employee of the Association other than the Officers and Directors and their designated agents. There shall be no obstruction of the Common Areas nor shall anything be kept on, parked on, stored on or removed from any part of the Common Areas without the prior written consent of the Board of Directors.

8.17 Fences. The erection and installation of all fences shall be subject to the provisions of this Article VIII. Cedar fencing similar to the fencing installed by the Declarant is acceptable upon approval from the AERC. All backyard fences must have a four foot (4') work gate for lawn maintenance. Metal, plastic, chain link or other wire fencing is specifically prohibited. Except as may be erected by Declarant, there shall be no fences in front of any dwelling on any Lot.

8.18 Abandoned Personal Property. Personal property, other than vehicles as provided for in Section 8.9, shall not be kept or allowed to remain for more than twenty-four (24) hours upon any portion of the Common Areas without prior written permission of the Board of Directors. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property and/or on the front door of the property owner's dwelling, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine and shall have no obligation to return, replace or reimburse the owner of the property. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights without prior notice to the property owner; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and

the location of the property within three (3) days after the property is removed. Neither the Association nor any officer or agent thereof shall be liable to any person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies rather than exercise its authority to remove property hereunder.

8.19 Governmental Regulations. All governmental building codes, health regulations, zoning restrictions, and the like applicable to the Property shall be observed. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

8.20 Exterior Appearance. To provide a neat, attractive and harmonious appearance throughout the Property, no window-mounted heating or air conditioning units or other item shall be attached to, hung or used on the exterior of any window or door of a Lot or on the exterior of any building that is visible from the street without the prior written consent of the Board of Directors or the AERC. Outside clotheslines or other outside facilities for the drying or airing of clothes are specifically prohibited and shall not be erected, placed or maintained on any portion of the Property, nor shall any clothing, rugs, or any other item be hung on any railing enclosing any stairway, landing, porch, patio, balcony or deck that is visible from the street.

8.21 Sale or Leasing. The following provisions shall apply to sales, leases, or subleases of Lots, whether pursuant to written contract or oral agreement:

(a) The right of any Lot Owner, including Declarant, to sell, transfer, or convey fee title to the Lot owned by such Lot Owner shall not be subject to any right of first refusal or any similar restriction in favor of the Association.

(b) In the event any Owner sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference this Declaration. In the event a deed fails to contain the provision as provided herein, this Declaration shall be incorporated into such deed by reference and all transfers shall be subject to the provisions contained herein. A Lot Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give written notice to the Board of Directors of such intention within seven (7) days after execution of the transfer or sales documents. The Lot Owner shall furnish to the Board as part of the notice: (i) the name and address of the intended grantee and (ii) such other information as the Board may reasonably require. Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give written notice to the Board of Directors of his or her ownership of the Lot. Upon failure of an Owner to give the required notice within the seven day time period provided herein, the Board may levy fines against the Lot and the Owner thereof and assess the Owner for all costs incurred by the Association in determining his or her identity.

(c) No Lot Owner may lease less than his entire Lot, and no lease shall be for a term less than one year. Any lease shall be expressly subject to the provisions of the Governing Documents, and rules and regulations adopted by the Board of Directors with respect to leasing may provide for a reasonable limitation on the number of occupants of a Lot. Any failure by the lessee

to comply with the terms of the Governing Documents shall be a default under the lease, and any lease shall so provide. In the event of such non-compliance by any lessee, the Board of Directors shall have the right to levy an assessment against the Lot Owner of such Lot for any charge or fine made by the Association incurred as a result of such non-compliance. Every lease shall be in writing, and prior to the commencement of any lease of a Lot, the Lot Owner or lessee shall provide the Secretary of the Association and the managing agent of the Association, if any, with the name of the lessee, the term of the lease, and a copy of the lease. With respect to the Lot Owner's responsibilities to the Association and other Lot Owners, any actions taken by such Lot Owner's lessee or any employee, invitee, family member, or guest of such lessee shall be deemed to have been taken by such Lot Owner.

(d) Any of the foregoing provisions of this Article VIII, Section 8.21 which may be construed to the contrary notwithstanding, the lease by Declarant of any Lot owned by Declarant or the lease by a first priority mortgagee or secondary purchase money mortgagee (provided that neither the grantee, nor any successor grantee on any such secondary purchase money mortgage was the seller of the Lot) who becomes the owner of a Lot at a judicial or foreclosure sale conducted with respect to the mortgage on such Lot or as transferee pursuant to any proceeding in lieu thereof, so long as such Lot is owned by such person, shall not be subject to the provisions of this Section 8.21, except that the occupancy of any Lot by any lessee of Declarant or such person or entity described in this section shall be otherwise subject to the provisions of this Declaration and the Bylaws and rules and regulations of the Association. This Section 8.21, as it applies to Declarant, may not be amended without the express written consent of Declarant for so long as any Lot is owned by Declarant.

(e) Any of the foregoing provisions of this Article VIII, Section 8.21 notwithstanding, the lease or sublease shall not be subject to the restrictions relating to the term of the lease or the leasing of less than the entire Lot if the lease or sublease is (1) by a joint owner of his or her undivided interest in a Lot to another joint owner of the same Lot, or (2) by an owner occupant of a Lot who subleases a portion of the Lot while continuing to personally occupy the remaining portion of the Lot.

(f) Transient and short term leasing or subleasing is prohibited.

8.22 Enforcement. Any construction, alteration or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request by the Board or the AERC, Owners shall, at their own cost and expense, remove such construction, alteration or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorneys' fees, may be assessed against the benefitted Lot and collected as an assessment. In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Article. Any exterior

change, alteration or construction (including landscaping) upon the Common Areas and Easement Areas made by an Owner in violation of this Declaration shall be at such Owner's sole risk and expense. The Board may require that the Owner remove the change, alteration or construction and restore the Common Areas or Easement Areas to its original condition, or it may require that the change, alteration or construction remain on the Common Areas or Easement Areas without reimbursement to the Owner for any expense incurred in making the change, alteration or construction.

ARTICLE IX

INSURANCE

9.1 Common Areas Insurance.

(a) The Board shall have the authority to and shall obtain and continue in effect adequate casualty insurance, in such form as the Board of Directors deems appropriate, insuring all Common Areas against loss or damage by fire or other such hazards deemed appropriate by the Board, including, without limitation, extended coverage and vandalism and malicious mischief, and coverage usually provided by the standard "all risk" endorsement. Such insurance coverage to be in an amount sufficient to cover the full replacement cost (without depreciation) of any repair or reconstruction in the event of damage or destruction from any such hazard. The casualty insurance policy affording fire and extended coverage insurance shall be written in the name of the Association as trustee for the benefit of the Lot Owners, their respective mortgagees, and any other persons having an interest in the lot, as their interests may appear.

(b) The Board of Directors shall conduct, at least once every two (2) years, an insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all insured Common Areas.

(c) All Property insurance policies obtained by the Board may contain reasonable deductibles, and the amounts thereof shall be added to the face amounts of such policies in determining whether the insurance coverage equals at least the full replacement cost of such insured improvements.

(d) All such insurance coverage obtained by the Board on Common Areas and Easement Areas shall be written in the name of the Association and costs of all such coverage shall be a common expense of the Association and subject to the provisions of Article VI of this Declaration. Exclusive authority to adjust losses under policies obtained by the Board and hereafter in force with respect to the Lots shall be vested in the Board. Insofar as permitted by law, the Association shall be required to make a good faith effort to secure insurance policies with the provisions hereinafter set forth:

(i) The insurer shall be financially sound and responsible and qualified to do business in the State of Georgia.

(ii) All property insurance policies shall be for the benefit of the Association.

(iii) All property insurance policies shall contain a waiver by the insurer of its right to repair and reconstruct instead of paying cash.

(iv) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by Owners or their Mortgagees.

(v) All policies shall contain a provision that no policy may be cancelled, invalidated, or suspended on account of the conduct of one or more of the individual Owners, or their respective families, tenants, agents, and guests or on account of the acts of any director, officer, employee, or agent of the Association or of its management agent without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

(vi) All policies shall contain "Agreed Amount and Inflation Guard Endorsement" and a "Construction Code Endorsement."

(vii) The insurer shall provide appropriate certificates to each Lot Owner and each mortgagee, together with duplicate originals of the policies and proof of payment of the premiums.

9.2 Owner's Insurance. It shall be the responsibility and obligation of each Owner to obtain insurance, at his own expense, affording public liability coverage and/or fire and other hazard property damage covering his Lot to the extent not covered by the Association, and to cover all betterments, improvements, and personal property of the Lot Owner.

9.3 Assessments. If the damage or destruction to Common Areas for which the insurance proceeds are paid to the Association is to be repaired or reconstructed, and such proceeds together with the deductible amounts maintained on reserve are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment or assessments against all Lots to provide sufficient funds to pay such excess cost of repair or reconstruction. Additional assessments, as needed, may be made in like manner at any time during or following the completion of such repair or reconstruction. If the proceeds of insurance paid to the Association for damage or destruction to a Lot is not sufficient to defray the cost thereof, the Lot Owner shall be responsible for such excess cost.

9.4 Repair and Reconstruction. If the damage or destruction to the Common Areas is to be repaired or reconstructed, the funds for the payment of repair or reconstruction shall consist of the proceeds of insurance, reserves for deductible amounts and funds collected by the Association from assessments as provided herein and shall be disbursed in payment of such costs in the discretion of the Board of Directors.

9.5 Additional Coverage. The Association shall maintain in effect at all times as a common expense any additional types of insurance coverage required by the Bylaws and this Declaration, including any workmen's compensation, officers' and directors' liability, or other insurance required by law, and such other insurance as the Board may from time to time deem appropriate.

ARTICLE X

GENERAL PROVISIONS

10.1 Amendment. Declarant has the authority to make any amendments, revisions or modifications of any kind to this Declaration for any reason whatsoever during the period within 120 days of the filing of this Declaration without need for approval from any Lot Owner.

This Declaration may be amended at any time and from time to time by the assent of Lot Owners having at least two-thirds (2/3) of the total eligible vote of the Association; provided, however, that should the Association elect to be covered by the Georgia Property Owners Association Act, any amendment adopted after submission to the Act shall required approval of two-thirds (2/3) of the total authorized vote of the Association. In addition, this Declaration may be amended in such respects and in such manner as may be expressly permitted by the provisions of this Declaration. So long as the same shall not (a) adversely affect the title to any Lot, (b) change the percentage of undivided ownership interest in and to the Common Areas appurtenant to any Lot, (c) materially alter or change any Lot Owner's right to the use and enjoyment of his Lot or the Common Areas as set forth in this Declaration, or (d) otherwise make any material change in this Declaration, each Lot Owner agrees that, if requested to do so, such Lot Owner will consent to the amendment of this Declaration or the other Association instruments or the Bylaws or Articles of Incorporation of the Association if (i) such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with, or remove any conflict or inconsistency with, the provisions of any applicable governmental statute, rule, regulation, or judicial determination which shall be in conflict therewith, (ii) such amendment is required by the governmental statutes, laws, rules or regulations applicable to or promulgated by a governmental or quasi-governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot, or (iii) any such amendment is necessary to enable any governmental agency to insure mortgage loans on the Lots based on the statutes, laws, rules or regulations applicable to or promulgated by such agency.

Except as expressly permitted or required by the provisions of this Declaration, any amendment to this Declaration which would change the number of votes in the Association, or the liability for common expenses appertaining to any Lot shall be approved in writing by all Lot Owners and all holders of all mortgages encumbering the Lots. Any provision in this Declaration which may be construed to the contrary notwithstanding, any amendment to this Declaration which would materially change, alter, modify or rescind any right, title, interest or privilege herein expressly granted to the holder of any mortgage affecting any of the Lots shall require the prior written approval of such holder.

Further, Declarant, so long as Declarant has the right to make appointments to the Board of Directors, may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment may not adversely affect the substantive rights of any Lot Owners hereunder. Nor shall Declarant amend the Declaration so as to adversely affect title to any Lot without the consent of the affected Lot Owner. Declarant's right under this paragraph shall expressly include the right to amend the Declaration to reflect further any Cost Sharing Agreement between the Association and Fairington Enclave Homeowners Association, Inc., covering jointly utilized easement areas and entrance features.

Amendments to this Declaration or the other Governing Documents may be proposed by the Board of Directors of the Association or by petition signed by Lot Owners having at least fifty percent (50%) of the total votes of the Association. Agreement of the required majority of Lot Owners to any amendment of the Governing Documents shall be evidenced by their execution of the amendment, or, in the alternative, the sworn statement of the President, any Vice President or Secretary of the Association, attached to or incorporated in an amendment executed by the Association, in which sworn statement it is stated unequivocally that agreement of the required majority of Lot Owners was otherwise lawfully obtained, and that all required notices were given. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself. The written consent of any mortgagee required with respect to such amendment shall also be recorded with such amendment. The approval of any amendments by a mortgagee shall be deemed implied and consented to if the mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after the mortgagee receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

10.2 Adoption of the Georgia Property Owners Act. The Board of Directors of the Association, with the written consent of the Declarant so long as Declarant still owns any Property, and without a vote of the members may amend this Declaration for the sole purpose of electing to be governed by and comply with the provisions of the Georgia Property Owners Association Act, O.C.G.A. § 44-3-220 *et seq.*

10.3 Duration. Unless amended in accordance with the provisions of this Declaration to submit the Property to the Act (in which case these covenants shall have perpetual duration), and except where permanent easements or other permanent rights or interests are herein created such as the obligation to share costs for common expenses, the covenants and restrictions contained in this

Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date of recordation of the Original Declaration, after which the said covenants shall automatically be renewed and extended for successive periods of ten (10) years.

10.4 Construction and Interpretation. In all cases, the provisions set forth or provided in this Declaration shall be construed together and given the interpretation or construction which, in the opinion of the Board of Directors, will best effect the intent of the general plan of the Property. The provisions hereof shall be liberally interpreted, and if necessary, they shall be so extended or enlarged by implication as to make them fully effective. In the event of any conflicts or inconsistencies between this Declaration, the Bylaws, and any rules and regulations, the terms and provisions of the this Declaration, then the Bylaws, then the rules and regulations in that order, shall prevail.

10.5 Enforcement. Each Lot Owner shall comply strictly with the covenants, conditions and restrictions set forth in this Declaration, the Bylaws and the rules and regulations of the Association now or hereafter adopted, as the same may be lawfully amended from time to time. In the event of a violation or breach, or threatened violation or breach, of any of the same, the Association or, in a proper case, any aggrieved Lot Owner or Owners, jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof. In addition to all other remedies, the Association, or a duly authorized agent thereof, shall have the right to enter upon any portion of the Property where a violation exists, pursuant to Article VIII, Section 8.22, and at the expense of the violating Lot Owner and using such force as may be reasonably necessary, summarily abate or remove any erection, thing or condition that may be or exist contrary to the intent and meaning of the provisions hereof or of the Bylaws, Design Standards or rules and regulations, if after ten (10) days' written notice of such violation, it shall not have been corrected by such Lot Owner; provided, however, that no further notice other than this Declaration shall be required prior to imposition of fines for violation of this Declaration or rules or standards adopted pursuant to Article IV, Section 4.1(c) and (d), Article VI, Section 6.5, Article VII and Article VIII, if notice of said rules and standards has been provided to the Lot Owner to be fined. Neither the Association nor its agents shall be deemed guilty or liable for any manner of trespass for such entry, abatement or removal. Should the Association employ legal counsel to enforce any of the foregoing or any other rights or remedies of the Association, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the violating Lot Owner. Inasmuch as the enforcement of the provisions of this Declaration and the Bylaws and such rules and regulations is essential for the protection of present and future Lot Owners, it is hereby declared that, for any breach thereof which cannot be adequately compensated by recovery of damages, the Association or, in any proper case, any aggrieved Lot Owner or Owners, in addition to all other remedies, may require and shall be entitled to the remedy by injunction to restrain any such violation or breach or threatened violation or breach.

Further, and except as otherwise provided in this Declaration, in any case of flagrant or repeated violation by a Lot Owner, then, in addition to the foregoing remedies, the Association may

suspend temporarily the voting rights of a Lot Owner, suspend temporarily the right of a Lot Owner to use certain of the Common Areas and/or levy summary charges against the Lot Owner for such violation, provided such summary charges must be reasonable for any one violation; provided, however, that the Association may not suspend vehicular access to a lot across the Common Area roadway. Moreover, each day or time a violation is continued or repeated after written notice is given to the Lot Owner to cease and desist, it shall be considered a separate violation. Collection of summary charges may be enforced against a Lot Owner as if such charges were a common expense owed by the Lot Owner involved, and such charges may be added to and thereupon shall become part of that portion of any assessment next coming due to which the Lot Owner is subject. No delay, failure or omission on the part of the Association or any aggrieved Lot Owner or Owners in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to do so thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, of the provisions and regulations, however long continued, or for the imposing of provisions which may be unenforceable.

10.6 Fining and Suspension Procedures. Except with respect to the failure of a Lot Owner to pay assessments, the Board shall not impose a fine, suspend voting rights, or infringe upon or suspend any other rights of a Lot Owner or other Occupant of a Lot for violations of the Declaration, the Bylaws, or any rules, regulations or covenants of the Association, unless and until the following procedure is followed:

(a) Demand. Written demand to cease and desist the alleged violation shall be served upon the Owner of the Lot responsible for such violation or where such violation exists specifying:

- (i) The alleged violation;
- (ii) The action required to abate the violation;
- (iii) A time period of not less than ten (10) days from the date of delivery or attempted delivery of such demand during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Bylaws, the rules, or regulations of the Association may result in the imposition of sanctions without further notice;
- (iv) The proposed sanction to be imposed; and
- (v) A statement that the proposed sanction shall become effective automatically if the violation continues past the period allowed in the demand for abatement without penalty or if the same violation subsequently occurs.

(b) Notice of Sanction. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty or if the same rule is subsequently violated, the Board may, upon notice, impose a fine or suspend voting rights or the rights to use the Common Areas. Any such fine or other sanction shall be effective or commence upon the sending of such notice or such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge such fine under subsection (c) below. In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. The notice shall state:

- (i) The nature of the alleged violation;
- (ii) The sanction imposed;
- (iii) That the alleged violator may, within ten (10) days from the date of the notice, request a hearing to contest the violation or the sanction imposed;
- (iv) That, if a hearing is requested, the alleged violator may produce statements, evidence, and witnesses on his behalf at the hearing; and
- (v) That all rights to challenge the alleged violation or the sanction or to have the sanction reconsidered are waived if a hearing is not requested in writing within ten (10) days of the date delivery or attempted delivery of the notice. "Delivery or attempted delivery" as used in this section 10.6 shall mean personal delivery to the Owner or attempted delivery by certified mail or other commercial delivery method whereby there is documentation of the date of attempted delivery of the notice.

(c) Hearing. If a request for a hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board shall schedule a hearing and send notice to the violator of the time, date and location of the hearing. The hearing shall be held before the Board in executive session, and the alleged violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time.

10.7 No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any Common Areas by any public or municipal agency, authority, or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the Common Areas.

10.8 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 deemed to be severable.

10.9 Rights of Holders, Insurers and Guarantors of First Mortgages, Secondary Purchase Money Mortgages, and Secondary Mortgages Held by Institutional Lenders. In addition to the rights of mortgagees elsewhere provided, including but not limited to Article VI, Sections 6.1, 6.6, 6.7, and 6.10; Article VII, Section 7.2 and 7.3; Article VIII, Sections 8.13 and 8.21; and Article X, Section 10.1, the holder, insurer and guarantor of each first mortgage, secondary purchase money mortgage, and secondary mortgage held by institutional lenders, or any insurer or guarantor of such mortgage, of a Lot shall

- (a) be entitled to written notice from the Association of any default by a Lot Owner in the performance of his obligations under this Declaration or the Bylaws or rules and regulations of the Association which is not cured within sixty (60) days,
- (b) be entitled to receive notice of and to designate a representative to attend and observe all meetings of Lot Owners, but not meetings of the Board of Directors of the Association,
- (c) be furnished copies of annual financial reports made to the Lot Owners,
- (d) be entitled to timely written notice of any action that requires the written consent of a specified percentage of mortgage holders, and
- (e) be entitled to advance notice of any amendments to the Declaration of a material adverse nature to mortgagees, as set out in Section 1 of this Article,

provided, however, that such holder, insurer or guarantor shall first file with the Association a written request that notices of material adverse amendments to the Declaration, default, notices of meetings and copies of financial reports be sent to a named agent or representative of the holder, insurer or guarantor at an address stated in such notice.

Further, each holder, insurer or guarantor which is an institutional lender (i.e., a bank, savings and loan association, insurance company, FHA-approved mortgage lender, pension fund, the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), mortgage banker or other lender generally recognized in the community as an institutional lender or a generally recognized commercial or governmental insurer or guarantor (including, without limitation, the Veterans Administration ("VA") and the Federal Housing Administration ("FHA")) shall, upon request, be entitled to inspect the books and records of the Association during normal business hours, and may, at the sole expense of such holder, insurer or guarantor, have an audited statement of the Association's books and records prepared if one is not otherwise available.

Each Owner of a Lot, by acceptance of a deed or other conveyance therefor, consents to such notifications and information to be provided to any such party by the Association. Any notice rights given in other provisions of this Declaration to Mortgagees are hereby granted to all insurers or guarantors of the mortgages held by said Mortgagees.

Each Mortgagee holding a secured interest in any portion of the Property which secured interest has priority over this Declaration agrees that upon release by the Mortgagee of its secured interest against an individual Lot which has been subjected to this Declaration, the release shall constitute consent by the Mortgagee to this Declaration so that any subsequent acquisition, by foreclosure or otherwise, of any portion of the Property pursuant to the secured interest will not terminate this Declaration as to the property so acquired.

10.10 Eminent Domain. In the event that all or part of the Property shall be taken by any authority having the power of eminent domain, the allocation of the award of such condemnation and all related matters, such as the reallocation of undivided interests in the Common Areas, and liabilities for assessments and votes, shall be handled pursuant to and in accordance with the then applicable provisions of this Declaration. Each Lot Owner shall be entitled to written notice of such taking or conveyances prior to disbursement of any condemnation award or proceeds from such conveyance. If any Lot or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any first mortgage on a Lot will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this Declaration or of any other document establishing the Property will entitle the Owner of a Lot or other party to priority over such holder with respect to the distribution of the proceeds of any award or settlement relating to such Lot. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements, if possible, on the remaining land included in the Common Area unless within sixty (60) days Declarant, so long as Declarant owns any property subject to the Declaration or which may unilaterally be subjected to the Declaration by the Declarant, and Members representing at least two-thirds (2/3) of the total Class A vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. If the taking or conveyance does not involve any improvements on the Common Area, or if the decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such awards or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

10.11 Rights of Third Parties. This Declaration shall be recorded for the benefit of the Lot Owners and their mortgagees as herein provided, and no adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of such mortgagees as herein provided, the Lot Owners shall have the right to cancel, extend, modify, amend or

otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

10.12 Suspension of Use of Common Elements and Common Utilities. The Association may suspend the rights of a Lot Owner to use certain of the Common Areas as provided in this Declaration. No such suspension shall deny any Lot Owner or Occupants access to the Lot owned or occupied. Except as hereinafter set forth, no suspension shall cause any hazardous or unsanitary condition to exist. Any services provided to a Lot or Lot Owner by the Association that are paid for as a common expense may be terminated for failure to pay assessments and other amounts due to the Association, subject to the suspension standards and notice requirements imposed by the institutional providers providing such services to the Association. The Association shall not be required to restore any terminated services until the amounts owed to the Association are paid in full. All expenses for termination of any services pursuant to this Section shall become part of the lien and assessments due by and chargeable to the Lot Owner.

10.13 Right of Action. Each Owner hereby acknowledges and agrees that the Association shall not be entitled to institute any legal action against anyone on behalf of any or all of the Lot Owners which is based on any alleged defect in any Lot or the Common Areas or Easement Areas, or any damage allegedly sustained by any Lot Owner by reason thereof, but rather, that such actions shall be instituted by the Lot Owners owning such Lots or served by such Common Areas or Easement Areas or allegedly sustaining such damage. Notwithstanding the foregoing, after the termination of Declarant's right to appoint and remove directors of the Association, the Association may settle any claim or claims against the Declarant for defects in the Common Areas, and said settlement shall be binding on all Lot Owners.

10.14 Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Property. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Lot Owner. The Association shall not be liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken.

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

10.16 Gender and Grammar. The singular whenever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

10.17 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 the particular Article or Section to which they refer.

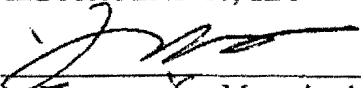
10.18 Author. This Declaration was prepared by Randall M. Lipshutz and Jody L Peskin, Lipshutz, Greenblatt LLC, 1 West Court Square, Suite 700, Decatur GA 30030.

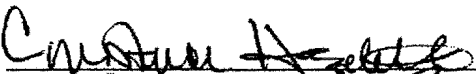
IN WITNESS WHEREOF, the Association has executed this Declaration under seal on the date first written above.

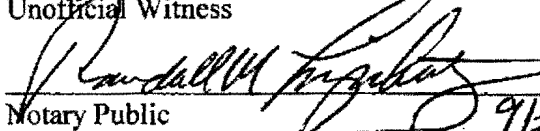
Signed, sealed and delivered in the presence of:

FOXDALE PROPERTIES, LLC

By:


Jinsang Jang Managing Member


Unofficial Witness


Notary Public 9/2/15

[Corporate Seal]



[Affix date of expiration of commission and notarial seal]



EXHIBIT "A" - SUBMITTED PROPERTY

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 75 of the 16th District, DeKalb County, Georgia, and more particularly being shown on that Plat of Fairington Enclave, Phase II, Unit I, as recorded at Plat Book 201, page 99, DeKalb County, Georgia records, which plat is incorporated herein for a full and complete description of the property.

EXHIBIT "B" - ADDITIONAL PROPERTY

All that tract or parcel of land lying and being in Land Lot 75 of the 16th District of DeKalb County, Georgia, being a 20.00 acre tract designated as Phase II on a Release Plat for Fairington Enclave, Phase II by Travis Pruitt & Associates, dated August 9, 2006, and being more particularly described as follows:

Commence from the intersection of Land Lots 54, 55, 74 and 75 and run thence along the line dividing Land Lots 54 and 75 in a southerly direction 1121.04 feet to the Point of Beginning: run thence South 88 degrees 27 minutes 42 seconds East 159.68 feet; thence South 74 degrees 58 minutes 47 seconds East 402.19 feet; thence South 80 degrees 50 minutes 00 seconds East 388.85 feet; thence South 87 degrees 44 minutes 54 seconds East 877.53 feet; thence South 82 degrees 47 minutes 14 seconds West 901.63 feet; thence South 28 degrees 36 minutes 40 seconds West 123.84 feet; thence South 03 degrees 46 minutes 38 seconds West 114.27 feet; thence South 20 degrees 04 minutes 09 seconds West 119.32 feet; thence South 04 degrees 29 minutes 56 seconds West 78.00 feet; thence an arc distance of 111.92 feet, said arc having a radius of 55.50 feet and being subtended by a chord bearing South 52 degrees 06 minutes 08 seconds West 93.90 feet; thence an arc distance of 19.07 feet, said arc having a radius of 20.00 feet and being subtended by a chord bearing South 21 degrees 39 minutes 00 seconds West 18.36 feet thence an arc distance of 34.20 feet, said arc being subtended by a chord bearing South 51 degrees 02 minutes 34 seconds West 34.19 feet; thence South 53 degrees 06 minutes 58 seconds West 667.44 feet to a point on the northeasterly right of way of Rock Springs Road (120' r/w): thence along said right of way an arc distance of 293.18 feet; said arc having a radius of 4140.00 feet and being subtended by a chord bearing North 39 degrees 12 minutes 22 seconds West 293.11 feet to a point on the line dividing Land Lots 54 and 75; thence along said Land Lot line North 01 degree 28 minutes 34 seconds East 640.06 feet; continue thence along said Land Lot line North 01 degree 32 minutes 18 seconds East 360.72 feet to the Point of Beginning.

Less and except that property shown herein as Exhibit "A".