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John Wieland Homes and Neighborhoods, Inc.  
1950 Sullivan Road  
Atlanta, GA 30337

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**OLDE IVY AT VININGS NEIGHBORHOOD**

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**DECLARATION OF PROTECTIVE COVENANTS**

**FOR**

**OLDE IVY AT VININGS NEIGHBORHOOD**

THIS DECLARATION is made on the date hereinafter set forth by John Wieland Homes and Neighborhoods, Inc., a Georgia corporation (hereinafter sometimes called "Declarant").

**Background Statement**

Declarant is the owner, or if not the owner has the written consent of the owner, of the real property described in Article II, Section 1 of this Declaration.

Declarant desires to subject the real property described in Article II, Section 1 hereof to the provisions of this Declaration to create a residential community and to provide for the subjecting of other real property to the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the real property described in Article II, Section 1 of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns, and shall inure to the benefit of each and every owner of all or any portion thereof.

**Article I**  
**Definitions**

Unless the context shall prohibit, certain words used in this Declaration shall be defined as set forth in Exhibit "A", attached and made a part of this Declaration.

**Article II**  
**Property Subject To This Declaration**

Section 1. Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions set forth in this Declaration is the real property described in Exhibit "B", attached and made a part of this Declaration.

Section 2. Other Property. Only the real property described in Section 1 of this Article II is made subject to this Declaration. However, as provided in Article DC, by one or more



have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special assessments may be levied against the entire membership, if the special assessment is for the benefit of all Owners, or against a Neighborhood, if the special assessment is for the benefit of Owners of Units within a Neighborhood. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. Specific Assessments. The Board shall have the power to specifically assess an Owner or a Neighborhood pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board shall have the authority to levy fines against Owners and Occupants pursuant to Article XIII, Section 1 of this Declaration. The Board shall also have the authority to levy specific assessments against the Neighborhood Associations and the Owners for the costs of maintenance performed by the Association that a Neighborhood Association or an Owner is responsible for under Article V, Sections 1 and 2. The Board may also specifically assess Neighborhood Associations and/or Units for the following Association expenses:

- (a) Expenses of the Association which benefit less than all of the Units may be specifically assessed equitably among all of the Units which are benefited (either directly or through the relevant Neighborhood Association) according to the benefit received.
- (b) Expenses of the Association which benefit all Units, but which do not provide an equal benefit to all Units, may be assessed equitably among all Units according to the benefit received (either directly or through the relevant Neighborhood Association).

Section 6. Lien for Assessments. All sums assessed against a Neighborhood Association or any Unit, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall be secured by a lien against the real property of such Neighborhood Association or against the Unit in favor of the Association from the time the sums become due and payable. The Association shall have the right, but not the obligation, to evidence the existence of the lien by filing a notice of lien in the Cobb County, Georgia, records. The lien shall be superior to all other liens and encumbrances on the Neighborhood Association real property or on any Unit, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the Cobb County, Georgia, records and all amounts advanced under the terms of and secured by the Mortgage.

All Persons acquiring liens or encumbrances on Neighborhood Association real property or on any Unit after this Declaration has been recorded, other than as provided above, shall be



deemed to consent that their liens or encumbrances shall be inferior to future liens for assessments, whether or not prior consent is specifically set forth in the installments creating their liens or encumbrances.

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments of assessments which are not paid when due shall be delinquent. Any assessment or installment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine, which shall not exceed ten dollars (\$10.00) or ten (10%) percent of the assessment payment, whichever is greater. The Association shall cause a notice of delinquency to be given to the Neighborhood Association or Unit Owner that has not paid within ten (10) days following the due date. If any such sums are not paid within thirty (30) days after the due date, the Board may accelerate and declare immediately due all such sums (including annual assessments or installments thereof) without any further notice being given to the delinquent Neighborhood Association or Unit Owner, and a lien, as herein provided, shall attach. Such lien shall include the late charge, interest on the principal amount due at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum, all late charges from the date first due and payable, all-costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. The existence of the lien may, but is not required to be, evidenced by the filing of a notice of lien in the Cobb County, Georgia records. If the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. If a Unit Owner is delinquent in payment of its pro rata share of the annual assessment or any installment thereof to their Neighborhood Association, the Unit Owner's right to use the Common Property shall be suspended.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

Section 8. Date of Commencement of Assessments/Assessment Obligation of Declarant.

(a) The assessments provided for herein shall commence as to each Neighborhood Association as of the first day of the calendar year in which the first Unit is conveyed by Declarant to a Person other than Declarant. The assessment payment for each Neighborhood Association shall be based on the number of Units in each Neighborhood Association at the start of each calendar month. The quarterly assessment shall be prorated based on the number of Units in each Neighborhood Association each month of the quarter.

(b) After the commencement of assessment payments, Declarant and its affiliates, on behalf of themselves and their respective successors and assigns, covenant and agree to be responsible for the full amount of the assessments allocated to each Unit owned by Declarant or its affiliates containing an occupied residence; provided, however, each Unit owned by Declarant or its affiliates which does not contain an occupied residence shall not be subject to any assessment provided for herein.

(c) Any Unit which has been approved by Declarant for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes



Section 11. Budget Deficits during Declarant Control. For so long as Declarant has authority to appoint the directors and officers of the Association, Declarant may (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of Declarant, or (b) cause the Association to borrow such amount from a commercial lending institution at the then-prevailing rates for such a loan in the local area of the Community. Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

## **Article V** **Maintenance**

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility. This maintenance may include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all grass, landscaping and paving within the Community. The Association shall maintain all Common Property of the Association, including all water and sewer pipes or facilities located on the Common Property, to the extent that such facilities are not maintained by public, private or municipal utility companies. Whether located on Common Property of the Association or common property or common elements of any Neighborhood Association, the Association shall also maintain:

- (a) all entry features for the Community, including water and electricity serving the entry features, and street signs, if any, originally installed by the Declarant or its affiliates;
- (b) all drainage detention and retention areas which were originally maintained by Declarant or its affiliates, to the extent such areas are not maintained on an ongoing basis by a governmental entity; and
- (c) all roads and parking areas owned by the Association and any road(s) which is/are a main thoroughfare within the Community.

The Association shall also maintain any property outside of Units located within the Community which was originally maintained by Declarant or its affiliates, but which is not the maintenance responsibility of a Neighborhood Association.

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether located within or without the Community, if the Board determines that such maintenance would benefit all Owners. This shall include the right of the Association to assume maintenance responsibility for amenities for the use and enjoyment of the Owners and to assume maintenance responsibility with respect to any Neighborhood. This assumption of responsibility may take place either by agreement with the Neighborhood or

because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of such maintenance of a Neighborhood shall be assessed against the Neighborhood Association as provided in Article IV, Section 5.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not completely covered or paid for by insurance, then the Association may perform the maintenance, repair or replacement at the expense of the Owner, and all costs shall be added to and become a part of the assessment obligation of the Owner, shall become a lien against the Unit, and shall be collected as provided in Article IV of this Declaration.

There is hereby reserved to the Association a blanket easement upon, across, over and under all property within the Community for access, ingress and egress as necessary to permit the Association to perform its maintenance responsibilities hereunder. The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

The Association shall not be liable for injury or damage to person or property caused by or resulting from failure to discharge its responsibility hereunder or from the elements, the Owner of any Unit, any other person, any utility, rain, snow or ice which may leak or flow from any portion of the Common Property, or any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to any Owner, or any Owner's Occupants, guests or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable for damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Article where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such Persons of its choice such duties as are approved by the Board of Directors.

Section 2. Neighborhood's Responsibility. Any Neighborhood Association having responsibility for maintenance of all or a portion of the property within a particular Neighborhood pursuant to covenants affecting the Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any such Neighborhood fails to perform its maintenance responsibility as required herein and in any additional covenants, the Association may perform it and assess the costs against the Neighborhood as provided in Article IV, Section 5 of this Declaration.

## Article VI

### Use Restrictions and Rules

Section 1. General. The Board of Directors may from time to time adopt, modify, or delete rules and regulations applicable to the Community. This authority shall include, but

shall not be limited to, the right to: (a) regulate the use and enjoyment of the recreational amenities, if any, within the Community, and (b) limit the type and size and to set the maximum and minimum speeds of vehicles within the Community. The Board shall also have the authority to impose all other necessary traffic and parking regulations and to restrict the maximum noise levels of vehicles in the Community. These rules shall be distributed to all Owners prior to the date that they are to become effective and after distribution shall be binding upon all Owners and Occupants of Units. Notwithstanding the above, until such time as one hundred (100%) percent of the Community has been developed and conveyed to Persons other than Declarant in the normal course of development and sale, no rules and regulations which affect the Declarant may be adopted, modified, or deleted without the written consent of the affected Declarant. Any covenants or Supplementary Declaration imposed on the property within any Neighborhood may impose stricter standards than those contained in this Article.

Section 2. Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or design guidelines adopted pursuant to the Declaration which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants of Units and guests and invitees of Occupants or Owners. The Owner shall be responsible for insuring that the Occupant, and the guests, invitees and licensees of the Owner or the Occupant strictly comply with all provisions of the Declaration, Bylaws, and any rules and regulations adopted by the Board of Directors. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

Section 3. Unightly or Unkempt Conditions. The pursuit of hobbies or other activities which might tend to cause disorderly, unsightly, or unkempt conditions, including, without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, shall not be pursued or undertaken in any part of the Community.

Section 4. Drainage. Declarant, for itself and its affiliates, reserves the right to prepare sloping banks, cut or fill, on a three (3) to one (1) slope on all streets and roads in the Community. Declarant, for itself and its affiliates and the Association, hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 5. Use of Common Property. There shall be no obstruction of the Common Property nor shall anything be kept, parked or stored on any part of the Common Property (except as expressly permitted herein) without the prior written consent of the Board. Personal property, except for personal property owned by the Association, is strictly prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property or on the rights-of-way located within the Community. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Property or on the rights-of-way located within the Community in violation of this Section, then the Board may remove and either discard or store the personal property in a location which the Board may determine. If personal property is removed in

accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity.. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

With prior written Board approval, and subject to any restrictions and charges imposed by the Board, an Owner may reserve portions of the Common Property for use for a period of time as set by the Board. Any such Owner who reserves a portion of the Common Property as provided herein shall assume, on behalf of himself or herself and his or her guests, Occupants and family, all risks associated with the use of the Common Property and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

Section 6. Prohibition of Damage. Without the prior written consent of the Board, nothing shall be done or kept on the Common Property that would increase the rate of insurance which the Association is obligated to obtain hereunder, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the common expenses of the Association. No Owner shall do any work which, in the reasonable opinion of the Board or its designee, would jeopardize the soundness or safety of the Common Property or any structure located on the Common Property, would reduce the value thereof, or would impair any easement or hereditaments thereto, without in every such case the prior written consent of the Board. No damage to or waste of the Common Property, or any part thereof, shall be permitted by any Owner or member of his or her family or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees or Occupants of his or her Unit.

## **Article VII .**

### **Insurance and Casualty Losses**

Section 1. Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and other property, if any, which the Association maintains or is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The

public liability policy shall have a combined single limit of at least One Million (51,000,000.00) Dollars.

The Board is authorized to contract with or otherwise arrange to obtain the required insurance coverage through the Declarant or its affiliates and to reimburse the Person so providing or arranging the insurance coverage for the cost. Declarant or its affiliates shall be authorized, but not obligated, to purchase the required insurance coverage for the benefit of the Association and the Owners. The coverage shall include the Association as a named insured. The Declarant or its affiliate, as the case may be, and Association shall agree upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant or its affiliate, as the case may be, in obtaining the required coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of subsections (b) through (e) below if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant or its affiliates.

Premiums for all insurance shall be a common expense of the Association. The policies may contain a reasonable deductible, and the deductible amount shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, except as otherwise provided above, and shall be governed by the provisions set forth below:

- (a) All policies shall be written with a company authorized to do business in Georgia.
- (b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations.
- (c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
- (d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if these are reasonably available, and all insurance policies shall be reviewed annually by the Board of Directors. In conducting such reviews the Board may engage an expert whom in its sole discretion it deems fit.
- (e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
  - (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

(iv) that no policy may be canceled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and, if available at reasonable cost, as determined in the sole discretion of the Board, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds. If obtained, the amount of fidelity coverage shall be determined in the Board of Directors' best business judgment, and, if available, shall equal at least three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and may not be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days' prior written notice to the Association. The Association shall also obtain construction code endorsements and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

## Section 2. Damage and Destruction—Insured by Association.

(a) In General. Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims covered under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Repair and Reconstruction. Any damage or destruction of property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed



unless, within sixty (60) days after the casualty, the Board obtains the agreement of all Neighborhood Associations and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX) to not repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to cover the cost of repair or reconstruction, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against each Neighborhood Association in proportion to the number of Units in each Neighborhood. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be retained by and for the benefit of the Association in an Association account.

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

Section 3. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Property, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total costs of repair, unless the insurance policy provides that the deductible will apply to each Unit separately. If any Owner fails to pay the deductible when required hereunder, the Association can pay the deductible and assess the cost to any such Owner pursuant to Article IV, Section 5 of this Declaration; provided, however, no Owner shall be assessed more than One Thousand Dollars (\$1,000.00) as the cost of the deductible for any one occurrence.

## **Article VIII**

### **Condemnation**

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after the taking, all Neighborhood Associations and the Declarant (so long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article IX) otherwise agree, the Association shall restore or replace the improvements taken on the remaining land included in the Common Property to the extent lands are available. The provisions of Article VII, Section 2, above, applicable to Common Property improvements damage, shall govern replacement or restoration



Section 4. Creation of Additional Neighborhoods and Annexation of Property to this Declaration. The Declarant reserves the unilateral right, but not necessarily the obligation, to: (a) create additional Neighborhoods on all or any portion of the property described in Exhibit "C" attached hereto and incorporated herein, which Neighborhoods may be organized as one or more condominium associations or townhome associations and (b) to subject said property and Neighborhood(s) to the terms of this Declaration. Any Neighborhood Associations created thereby shall be members of the Association as provided for herein.

## **Article X**

### **Architectural Standards**

Section 1. Purpose. The primary purpose of the procedures set forth herein is to protect and preserve property values in the Community by maintaining architectural and aesthetic harmony and compatibility among the Units and the structures on the Units in the Community. The architectural controls and standards may be designed and applied to reflect that Units within the Community are of varying sizes, topographies and locations, and that improvements and modifications suitable for one Unit may be inappropriate for another Unit. Therefore, the Board is authorized to apply or adopt different standards for different Units to reflect the varying sizes and layouts of Units within the Community.

#### Section 2. Architectural Standards.

(a) Construction, Alteration or Addition by Unit Owners. Each Neighborhood Association architectural control authority shall submit to the Board or its designee all approved applications (along with all supporting documentation) from Unit Owners for any construction, alteration or addition that are visible from other Neighborhoods or from any portion of the Common Property of the Association. Such applications shall be forwarded to the Board or its designee not later than thirty (30) days from the date of receipt. The Board or its designee shall have the right to veto any such request and send written notification of such veto to the appropriate Neighborhood Association architectural control authority within ten (10) days of the date of receipt. Any request vetoed by the Board or its designee shall be disapproved by the appropriate Neighborhood Association architectural control authority and such authority shall provide written notification to the Unit Owner as may be provided in the covenants applicable to the Neighborhood. Any application disapproved by a Neighborhood Association architectural control authority because of a veto by the Board or its designee shall so state and the Unit Owner shall be provided a right to appeal the decision as provided in Section 4 below. In reviewing any application, the Board or its designee may consider any factor it deems necessary, including, but not limited to, aesthetic considerations, materials to be used, harmony with the external design of existing buildings, Units and structures, the location in relation to surrounding Units and structures, and the surrounding topography. However, no approval shall be required for any construction, alteration or addition made by the Declarant.

In the event that the Board or its designee fails to veto an application within ten (10) days after the application and all information as the Board or its designee may reasonably require have been submitted, the Board shall waive its veto right and this paragraph will be deemed



control authority. The Board of Directors shall have the final authority to revoke a veto by the Board's designee. If the Board does not receive written notice by certified mail requesting an appeal within fourteen (14) days from the date of the notice to the Owner of the veto decision, the veto of the Board's designee shall become final and all rights of appeal shall terminate and thereafter be void.

Section 5. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Declarant nor the Board of Directors or its designee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, or members of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

APPLICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH APPLICATIONS, THE BOARD, ITS MEMBERS, ITS DESIGNEE AND THE ASSOCIATION DO NOT ASSUME LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED BASED ON SUCH APPLICATIONS. DECLARANT, ITS PARTNERS AND AFFILIATES, THE ASSOCIATION, THE BOARD, ITS DESIGNEE, AND THE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES AND AGENTS OF ANY OF THEM, SHALL NOT BE LIABLE IN DAMAGES OR OTHERWISE TO ANYONE SUBMITTING APPLICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS, BY REASON OF ANY MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR THE FAILURE TO APPROVE OR DISAPPROVE ANY SUCH APPLICATIONS. EVERY PERSON WHO SUBMITS AN APPLICATION AND EVERY OWNER AGREE THAT SUCH PERSONS AND OWNERS WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, ITS PARTNERS AND AFFILIATES, THE ASSOCIATION, THE BOARD, ITS DESIGNEE, OR THE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES AND AGENTS OF ANY OF THEM, TO RECOVER ANY DAMAGES OR FOR ANY OTHER PURPOSE, AND SUCH PERSONS AND OWNERS HEREBY RELEASE, REMISE, QUITCLAIM AND COVENANT NOT TO SUE FOR ALL CLAIMS, DEMANDS AND CAUSES OF ACTION, ARISING OUT OF OR IN CONNECTION WITH ANY MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR THE FAILURE TO APPROVE OR DISAPPROVE ANY SUCH APPLICATIONS. ALL SUCH PERSONS AND OWNERS HEREBY WAIVE THE PROVISIONS OF ANY LAW WHICH PROVIDE THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

Section 6. No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. Each Owner further acknowledges that the Board of Directors may adopt different architectural standards for

different parts of the Community, based on street visibility and location of the proposed modification in the building. The approval of either the Board of Directors or its designee of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board of Directors, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 7. Enforcement. Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming and shall authorize the Board to enjoin such violation and to recover damages therefrom, including attorney's fees incurred in enforcing the Declaration, in addition to such other remedies as provided herein. Upon written request from the Board, the Owner or the Neighborhood Association, as appropriate, shall, at its 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 or a Neighborhood Association fail to remove and restore as required hereunder, the Board shall have the right, in addition to the other rights set forth in this Declaration, 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 attorney's fees, may be assessed against such Unit or Neighborhood Association, as appropriate, and collected as an assessment pursuant to this Declaration. Additionally, all costs incurred by the Association in compelling any Owner or Neighborhood Association to make required repairs or remove debris hereunder, or costs incurred by the Association in performing such work if the Owner or the Neighborhood Association, as appropriate, fails to do so, including attorney fees actually incurred, shall be an assessment against such Owner and Unit or the Neighborhood Association.

If any Owner, Occupant or Neighborhood Association makes any exterior change, alteration, or construction (including landscaping) upon the Common Property or Area of Common Responsibility in violation of this Article, they do so at their sole risk and expense. The Board may require that the change, alteration, or construction remain on the Common Property without reimbursement to the Owner, Occupant or Neighborhood Association for any expense they may have incurred in making the change, alteration, or construction, or the Board may remove such construction at any time without notice to such Owner, Occupant or Neighborhood Association.

In addition to the foregoing, the Board of Directors shall have the authority and standing to impose reasonable monetary fines and to pursue all legal and equitable remedies available to enforce the provisions of this Article and its decisions or those of its designee. Furthermore, the Board shall have the authority to record in the land records where the Community is located notices of violation of the provisions of this Article.

## **Article XI**

### **Mortgage Provisions**

The following provisions are for the benefit of holders of first Mortgages on Units in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws,

notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number) (therefore becoming an "eligible holder") will be entitled to timely written notice of:

(a) any delinquency in the payment of specific assessments or charges owed by an Owner of a Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

(b) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(c) any proposed action which would require the consent of a specified percentage of Mortgage holders.

Section 2. Approval of Action. Unless two-thirds (2/3) of the first Mortgagees and all of the members give their consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection), other than personal property of the Association;

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Property (The issuance and amendment of architectural standards, procedures, rules, and regulations or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this subsection.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

Nothing contained in this Section 2 shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration for any of the acts set out in this Section 2.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 4. Notice to Association. Upon request, each Unit Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Section 5. Amendments by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 6. VA/HUD Approval. As long as the Declarant has the right to appoint and remove officers and directors of the Association, the following actions shall require the prior approval of the U. S. Department of Veterans Affairs ("VA") (so long as the VA is guaranteeing any Mortgage in the Community) and/or the U. S. Department of Housing and Urban Development ("HUD") (so long as HUD is insuring any Mortgage in the Community), as applicable: annexation of additional property to the Community, except for annexation by Declarant in accordance with Article IX; mergers and consolidations; dissolution; dedication of Common Property to any public entity; mortgaging of Common Property, and material amendment of the Declaration, Bylaws or Articles of Incorporation of the Association.

Section 7. Applicability of This Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Georgia law for any of the acts set out in this Article.

Section 8. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## **Article XII**

### **Easements**

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Unit and adjacent portion of the Common Property or as between adjacent Units due to the unintentional placement or



(a) Every Owner of a Unit shall have a right and easement of entry and exit, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Unit, subject to the following provisions:

(ii) the right of the Association to suspend the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against his Unit which is hereby provided for remains unpaid as provided in Article IV of this Declaration; and, for a reasonable period of time for a violation of the Declaration, Bylaws, or rules and regulations;

(iv) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the

(b) Any Unit Owner may delegate his right of use and enjoyment in and to the Common Property to the members of his family, his tenants and guests. An Owner shall be deemed to have made a delegation of all these rights in their entirety to the Occupants of the Owner's Unit, if leased.

Section 4. Easements for Entry. In addition to the right of the Board to exercise self-help as provided in Article XIII, Section 2, the Board shall have the right, but not the obligation, to enter upon any property within the Community for emergency, security, and safety reasons. For the purposes of this Section, an emergency justifying immediate entry into a Unit shall include, without limitation, a water or other utility leak, strong foul odor, obvious insect infestation, or sounds indicating that a person or animal might be injured or sick and require immediate medical attention. This right may also be exercised by the agents of the Association, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. The Board shall have the right to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard if an Owner or Occupant does not cure the condition after request by the Board.

Section 6. Easements for Entry Features and Street Signs. There is hereby



Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict; (b) if an amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (c) if an amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable the lender or purchaser to make or purchase Mortgage loans on the Units subject to this Declaration; or (d) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Units subject to this Declaration. However, any such amendment shall not adversely affect the title to any Owner's Unit unless the Unit Owner consents to the amendment in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article IX, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Unit Owner nor shall it adversely affect title to any Unit without the consent of the affected Unit Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of all members, as represented by their respective boards of directors, and the consent of the Declarant (so long as Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified in the amendment. No provision of this Declaration which reserves or grants special rights to Declarant and/or its affiliates shall be amended without the prior written consent of Declarant and any affiliates affected by such amendment, so long as Declarant and/or such affiliates, as the case may be, own any property primarily for development and/or sale in the Community or subject to annexation by Declarant to the Community.

Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in a court of competent jurisdiction in a county in which the Community is located within one (1) year of the recordation of such amendment.

Notwithstanding the foregoing, Declarant or the Board of Directors, without the necessity of a vote of Owners or members, may amend this Declaration to comply with any applicable

state, city or federal law, and/or to correct scriveners' errors.

Section 5. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 6. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 7. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 8. Conveyance of Property to Association; Assignment of Contracts. Declarant and its affiliates may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement or other property interest. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its members. The Association hereby constitutes and appoints Declarant or its assigns as agent and attorney-in-fact to accept on behalf of the Association any such conveyance to the Association and to execute on behalf of the Association any and all documents, including, without limitation, deeds and transfer tax declaration forms, necessary or convenient to effectuate and document any such conveyance to the Association, and all of the acts of such attorney-in-fact are hereby ratified. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise.

Declarant and its affiliates shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. The Association shall also accept assignment of, and shall assume and agree to perform, any contracts entered into by Declarant and its affiliates for the benefit of the Association or the Owners, including, without limitation, detention pond maintenance agreements and all types of utility easements.

Section 9. Contracts Executed During Declarant Control. All contracts or leases executed by or on behalf of the Association during the period in which the Declarant has the right to appoint the directors and officers of the Association under the Bylaws shall contain a termination clause permitting the Association to terminate the contract or lease at any time, without cause and without penalty, upon not more than ninety (90) days' written notice.

Each Neighborhood Association and each Owner acknowledges that Declarant and its affiliates provide services utilized by communities such as the Community, including, but not limited to, property management and landscape services. Each Neighborhood Association and each Owner consents and agrees that the Association, acting through the Declarant-

appointed Board of Directors, may enter into service contracts with Declarant and its affiliates on its own authority and without the approval of any third party.

Section 10. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 11. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the Bylaws, the Articles of Incorporation of the Association, rules and regulations, use restrictions, and any amendments to any of the foregoing, Declarant hereby expressly reserves unto itself and its successors and assigns a non-exclusive, perpetual right, privilege, and easement with respect to the Community for the benefit of Declarant, its successors and assigns, over, under, in, and/or on the Community, without obligation and without charge to Declarant, for the purposes of taking all actions related to or connected with construction, installation, relocation, development, sale, maintenance, repair or replacement in the Community and any other property now owned or which may in the future be owned by Declarant (such other property is hereinafter referred to as "Additional Property"). The reserved easement shall constitute a burden on the title to the Community and specifically includes, but is not limited to:

(a) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; and the right to tie into any portion of the Community with streets, driveways, parking areas and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee payable to the Association or any member or any Owner for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community;

(b) the right to use (continually or from time to time) without charge any clubhouse or similar structure and appurtenant facilities, if any, in the Community for business purposes or company functions and any similar use, including, but not limited to, sales and marketing meetings, offices for sales or other employees and agents, a design studio, and employee parties; and

(c) the right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, construction trailers and sales offices in the Community.

No rights, privileges and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Community, but shall be held independent of such title, and no such right, privilege or easement shall be surrendered, conveyed or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege or easement by express reference thereto.

If these reserved easements are exercised without annexing any Additional Property to the Community, the owners of the affected Additional Property shall share the costs, if any,

of using and maintaining utility and similar facilities, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities, with the Owners in the Community in the proportion that the number of completed dwellings on the affected Additional Property bears to the sum of the number of completed dwellings on the affected Additional Property plus the number of Units in the Community. The costs of maintenance and repair of Community streets and driveways shall likewise be apportioned to the affected Additional Property if the only means of vehicular access to the affected Additional Property is across the Community. For the purposes of this provision, a dwelling on the affected Additional Property shall be considered completed when a certificate of occupancy has been granted. The allocation of expenses and collection therefor may be done on a monthly, quarterly or annual basis as may reasonably be determined by the Association in accordance with this Declaration. If any of the Additional Property is added to the Community, from the time of the annexation, the sharing of costs and expenses and the use of any property so added shall be governed by this Declaration, rather than by these reserved easements.

This Section shall not be amended without the prior written consent of Declarant so long as Declarant owns any property primarily for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community.

Section 12. Agreements. Subject to the prior approval of Declarant, so long as Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX above, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 13. Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

Section 14. Right of Action. Each Neighborhood Association and all Owners hereby acknowledge and agree that the Association shall not be entitled to institute any legal action against anyone on behalf of any or all of the members or the Owners which is based on any alleged defect in any Unit or the Common Property, or any damage allegedly sustained by any Neighborhood Association or any Owner by reason thereof, but rather, that all such actions shall be instituted by the Person(s) owning such Units or served by such Common Property or allegedly sustaining such damage. Notwithstanding the above, once the Declarant no longer has the right to appoint and remove directors and officers, as set forth in Article III, Section 2 of the Bylaws, the Association Board of Directors may negotiate the resolution of any alleged defect(s) in the Common Property and Area of Common Responsibility on behalf of each Neighborhood Association and Unit Owners and shall have the right and authority to settle and release on behalf of any and all of the Neighborhood Associations and Unit Owners claims, causes of action, damages and suits





SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. FURTHERMORE, DECLARANT AND THE ASSOCIATION DO NOT GUARANTEE THAT NON-UNIT OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE COMMUNITY AND COMMIT CRIMINAL ACTS IN THE COMMUNITY, NOR DO DECLARANT AND THE ASSOCIATION GUARANTEE THAT CRIMINAL ACTS IN THE COMMUNITY WILL NOT BE COMMITTED BY OTHER UNIT OWNERS OR OCCUPANTS. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, THE DECLARANT, ITS PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, AND THE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF ANY OF THE FOREGOING, ARE NOT INSURERS AND THAT EACH PERSON USING THE COMMUNITY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO PROPERTY, TO UNITS, AND TO THE CONTENTS OF UNITS AND THE STRUCTURES THEREON RESULTING FROM ACTS OF THIRD PARTIES.

Section 19. Use of Recreational Facilities by Nonmembers. For so long as Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX above, Declarant shall have the right to grant to persons who are not members of the Association or a Neighborhood Association the right to use the Community recreational facilities (if any). The extent and duration of nonmember use and the fee to be charged therefor shall be determined solely by Declarant. The Declarant may grant nonmember use rights to individuals as an easement appurtenant to such individuals' residential real property so that such use rights shall automatically inure to the benefit of both the original grantees and their respective successors-in-title to such real property. For so long as Declarant or an affiliate of Declarant owns such recreational facilities, nonmember user fees shall be paid to Declarant. If such recreational facilities are conveyed to the Association, nonmember user fees due and payable after the date of such conveyance shall be paid to the Association. Declarant shall determine the amount of nonmember user fees which are due and payable after such conveyance. Such fees shall be paid in equal annual installments to the Association, unless otherwise determined by the Board. The amount of such installment payments may be increased each year by the Board so long as the percentage increase (as compared to the previous year's installment) does not exceed the percentage increase in the annual assessment levied against members of the Association (as compared to the previous year's assessment).

Unless otherwise determined by the Declarant, any use right granted to nonmembers which extends beyond the termination of Declarant's option to unilaterally subject additional property to this Declaration shall be valid and may not be terminated so long as the terms and conditions imposed upon nonmember use by Declarant are complied with by the nonmember user.

Declarant hereby expressly reserves unto itself and its successors and assigns a non-exclusive, perpetual right, privilege and easement with respect to the Community for the benefit of Declarant, its successors, assigns and the above discussed nonmember users, over, under, in and/or on the Community (including, without limitation, the above described

recreational facilities), without obligation and without charge to the foregoing, for the purposes of taking all actions related to or connected with the granting of nonmember use and the use by such nonmembers as described above. Such right, privilege and easement shall include, without limitation, the right of access, ingress, use and egress of and to the above described recreational facilities and the right of access, ingress, use and egress for vehicular and pedestrian traffic over, under, on or in the Community roads, parking areas and walkways.

Declarant, its partners and affiliates, and the officers, directors, shareholders, employees, agents, successors and assigns of any of the foregoing, shall not be liable for and are hereby held harmless by the Association from any failure of any nonmember to pay a nonmember user fee to the Association where required to do so by this Section. In such case, the Association's sole remedy shall be to suspend the use right of the nonmember who has not timely paid until all amounts owed are paid. Declarant, its partners and affiliates, and the officers, directors, shareholders, employees, agents, successors and assigns of any of the foregoing, shall also not be liable for and are hereby held harmless by the Association from any personal injury or property damage caused by a nonmember entitled to use the above described recreational facilities.

So long as Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX above, Declarant shall have the sole right to grant use rights to the above described recreational facilities to nonmembers and the Board shall have no such right; provided, however, upon the expiration or earlier surrender in writing of this option, the Board shall have the rights of the Declarant set forth in this Section, subject to then existing nonmember use rights. The provisions of this Section shall apply notwithstanding any contrary provisions in this Declaration, the Bylaws, Articles of Incorporation, rules and regulations, use restrictions and any amendments to any of the foregoing.

IN WITNESS WHEREOF, the undersigned has executed this instrument and affixed the corporate seal this 19th day of November, 1999.

Signed, sealed and delivered in the presence of:

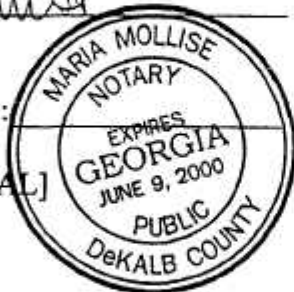
Andrea Iannarelli

Witness

[Signature]  
Notary Public

My Commission Expires:

[NOTARIAL SEAL]

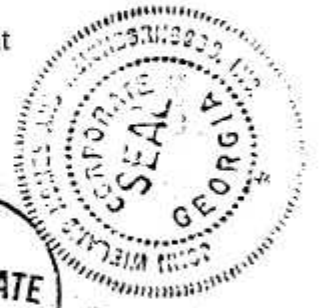


JOHN WIELAND HOMES AND  
NEIGHBORHOODS, INC., a Georgia  
corporation

By: [Signature]

Richard A. Bacon  
Executive Vice President

[CORPORATE SEAL]



The Association has executed this instrument and affixed the seal below this 17th day of November, 1999 for the purpose of consenting to all of the terms and provisions of this Declaration.

Signed, sealed and delivered in the presence of:

Indira Pannarelli

Witness

[Signature]

Notary Public

My Commission Expires

[NOTARIAL SEAL]



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rev. 111999

OLDE IVY AT VININGS NEIGHBORHOOD ASSOCIATION, INC., a Georgia nonprofit corporation

By: [Signature]

Dan Fields  
Vice President

[CORPORATE SEAL]



## **EXHIBIT "A"**

### **Definitions**

The following words, when used in this Declaration or in any amendment thereof or in any Supplementary Declaration (unless the context shall prohibit), shall have the following meanings:

(a) "Area of Common Responsibility" shall mean and refer to the Common Property, together with those areas, if any, which by or pursuant to the terms of this Declaration or by contract or agreement with any Neighborhood, Neighborhood Association and/or other Person become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located in the Community, or any public rights-of-way within or adjacent to the Community, may be part of the Area of Common Responsibility.

(b) "Association" shall mean Olde Ivy at Vinings Neighborhood Association, Inc., a nonprofit Georgia corporation, its successors and assigns, also known as the "Master Association."

(c) "Board of Directors" or "Board" shall mean the appointed or elected body of the Association, as applicable, having its normal meaning under Georgia corporate law.

(d) "Bylaws" shall refer to the Bylaws of Olde Ivy at Vinings Neighborhood Association, Inc., attached to this Declaration as Exhibit "D" and made a part of this Declaration.

(e) "Common Property" shall mean any and all real and personal property and easements, leaseholds and other interests therein, together with the facilities and improvements located on the property, now or in the future owned by the Association.

(f) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto, and (i) such additions thereto as may be made by Declarant by Supplementary Declaration of all or any portion of the real property described in Exhibit "C"; and (ii) such additions thereto as may be made by the Association (as provided in the Declaration) by Supplementary Declaration of other real property.

(g) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. This determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(h) "Declarant" shall mean and refer to John Wieland Homes and Neighborhoods, Inc., a Georgia corporation, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "B", attached hereto, or in Exhibit "C", attached hereto, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such

designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "B", attached hereto, and in Exhibit "C", attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one Person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time. An "affiliate" of Declarant John Wieland Homes and Neighborhoods, Inc. shall mean any entity in which John Wieland Homes and Neighborhoods, Inc. or John Wieland (and/or member(s) of his immediate family) own or control at least twenty (20%) percent of the beneficial interest thereof.

(i) "Majority" means those eligible votes, Owners or other group as the context may indicate, totaling more than fifty (50%) percent of the total eligible number.

(j) "Mortgage" means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(k) "Mortgagee" shall mean the holder of a Mortgage.

(l) "Neighborhood" shall refer to each separately developed residential area within the Community, each of which shall be governed by a townhome association or condominium association ("Neighborhood Association").

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

(n) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Unit located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(o) "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(p) "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes additional restrictions and obligations on the property, or both.

(q) "Unit" shall mean a portion of the Community, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached residence for a single family. The term shall refer to the land, if any,

which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, condominium units and townhouse units, but shall not include Common Property, common property of any other association which is part of the Community, or property dedicated to the public. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

**EXHIBIT "B"**

Property Submitted

Townhome Neighborhood Property:

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 764 and 765 of the 17th District, 2nd Section of Cobb County, Georgia, containing approximately 1.28 acres, and being more particularly described as Pod "A" - Phase 1, Olde Ivy at Vinings, Block "A," Unit 6, as shown on that certain Final Plat for Pod "A" - Phase 1, Olde Ivy at Vinings Block, "A," Unit 6, dated October 14, 1999, prepared by Gaskins Surveying Co., certified by and bearing the seal of John C. Gaskins, Georgia Registered Land Surveyor No. 2060, which plat was recorded on October 21, 1999 in Plat Book 184, Page 18, Cobb County, Georgia land records.

**EXHIBIT "C"**

Additional Property Which May Unilaterally Be Submitted by Declarant

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 763, 764, 765, 766, 819, 820, 821, 822, 834, 835, 836 and 837 of the 17th District, 2nd Section of Cobb County, Georgia.