## Parcel

| | |
|---|---|
| Parcel ID: | 09C080000142067 |
| Property Location: | 4239 GIVERNY BLVD |
| Unit: | |
| City: | SOUTH FULTON |
| Neighborhood: | 97331 |
| Improvement Strata: | VA |
| Property Class: | R4 |
| Land Use Code: | 100-Residential vacant ** |
| Living Units: | 0 |
| Acres: | 2.2838 |
| Zoning: | MIX- |
| Location | 6 |
| Fronting: | 9 - 9 |
| Parking Type: | 3-ON AND OFF STREET |
| Parking Quantity: | 2 |
| Street 1/Street 2: | 1-Paved/- |
| Topo 1/Topo2/Topo3: | 2-ABOVE STREET/4-ROLLING/- |
| Util1/Util2/Util3: | 1-ALL PUBLIC/8-ALL UNDERGROUND/- |

## Legal

| | |
|---|---|
| Tax District | 55 |

## Owners

| | |
|---|---|
| Owners: | PILOT FINANCIAL LLC |

## Mailing Address

| Address | FUL Exmp Code | ATL Exmp Code |
|---|---|---|
| PILOT FINANCIAL LLC<br>1015 ATLANTIC BLVD STE 507<br>ATLANTIC BEACH FL 32233 | | |

## Sales

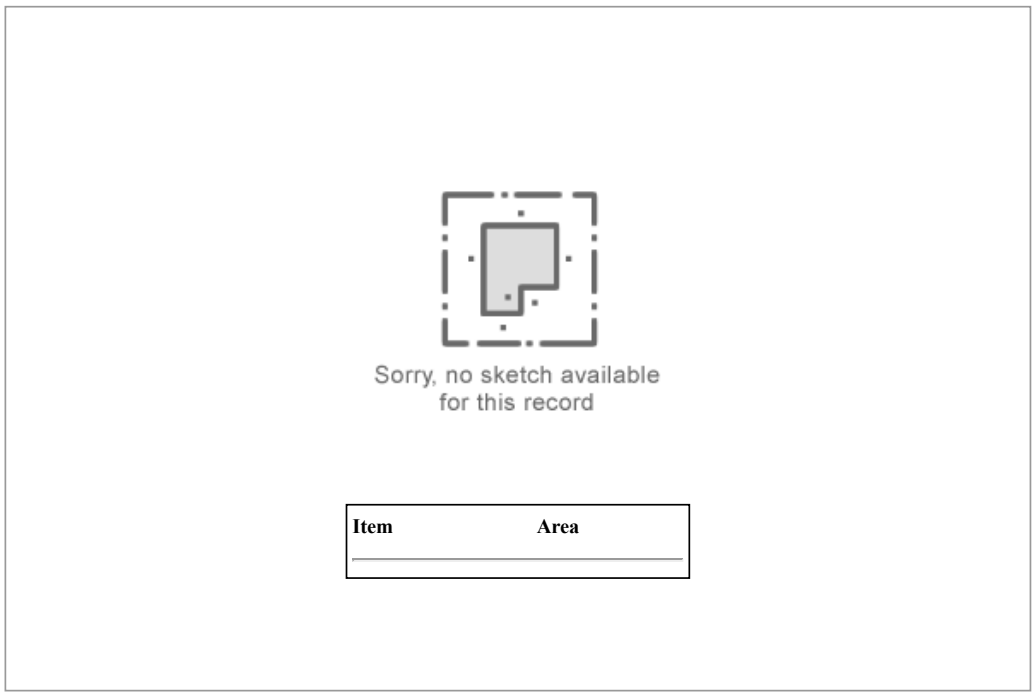
| Sale Date: | Sale Price: |
|---|---|
| 02-JAN-08 | $0 |
| 19-OCT-06 | $250,000 |

## Sale Details



| | |
|---|---|
| Grantor: | PILOT FINANCIAL, LLC, AS ATTORNEY-IN-FAC |
| Grantee: | PILOT FINANCIAL LLC |
| Sales Date: | 02-JAN-08 |
| Sale Price Sale Validity: | 5 : Liquidation / Foreclosure |
| Sale Source: | 6 : PT61 |
| Sales Type: | : |
| Sale Flag: | |
| Deed Book: | 46213 |
| Deed Page: | 0290 |
| Deed Type: | DP |

| | |
|---|---|
| Line Number: | 1 |
| Land Type: | A - ACREAGE |
| Land Code: | 0 |
| Square Feet: | 99,482 |
| Acres: | 2.2838 |




| Item | Area |
|---|---|

# LE JARDIN™

## PHASE ONE PRICE LIST

| Lot Number | Price | View | Acreage |
|---|---|---|---|
| 1 | $295,000 | Interior | 2.0 |
| 2 | $295,000 | Interior | 1.8 |
| 3 | $295,000 | Interior | 1.8 |
| 4 | $320,000 | Interior | 2.4 |
| 5 | $310,000 | Interior | 2.5 |
| 6 | $350,000 | Interior | 2.3 |
| 7 | $350,000 | Interior | 2.5 |
| 8 | $355,000 | Lakeview | 2.3 |
| 9 | $495,000 | Lakefront | 2.2 |
| 10 RESERVED | $550,000 | Lakefront | 2.5 |
| 11 RESERVED | $650,000 | Lakefront | 2.6 |
| 12 RESERVED | $1.400,000 | Lakefront | 4.7 |
| 13 | $695,000 | Lakefront | 2.4 |
| 14 | $310,000 | Interior | 1.6 |
| 15 | $625,000 | Lakefront | 2.6 |
| 16 | $650,000 | Lakefront | 2.6 |
| 17 | $495,000 | Lakeview | 2.1 |
| 18 | $350,000 | Lakeview | 2.8 |
| 19 | $465,000 | Lakefront | 2.9 |
| 20 | $725,000 | Lakefront | 2.7 |
| 21 RESERVED | $1,100,000 | Lakefront | 3.8 |
| 22 RESERVED | $295,000 | Interior w/Lakeview | 1.6 |
| 23 | $230,000 | Interior | 1.7 |
| 24 | $230,000 | Interior | 1.7 |
| 25 | $250,000 | Interior | 2.2 |
| 26 | $300,000 | Interior | 1.8 |
| 27 | $310,000 | Interior | 2.2 |
| 28 | $270,000 | Interior | 1.8 |
| 29 | $285,000 | Interior | 2.1 |
| 30 | $265,000 | Interior | 1.8 |

Prices and availability subject to change without notice. 05/02/05 (TJ)

Deed Book 42356 Pg 239
Filed and Recorded Apr-13-2006 02:56pm
2006-0111810
Juanita Hicks
Clerk of Superior Court
Fulton County, Georgia

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

# FOR

# GIVERNY AT LE JARDIN

LE JARDIN

GIVERNY

Upon recording, please return to:

M. Maxine Hicks, Esq.
EPSTEIN BECKER & GREEN, P.C.
Resurgens Plaza
945 East Paces Ferry Road, Suite 2700
Atlanta, Georgia 30326
www.ebglaw.com

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## TABLE OF EXHIBITS

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

# FOR

# GIVERNY AT LE JARDIN

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for Giverny at Le Jardin ("Declaration") is made as of the date set forth on the signature page hereof by Le Jardin, LLC, a Georgia limited liability company (the "Declarant").

Declarant is the owner of the real property described on Exhibit "A," which is attached and incorporated by reference. This Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the creation of Giverny at Le Jardin Owners Association, Inc. to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration, the By-Laws, and the Design Guidelines (capitalized terms are defined in Article 1 below).

Declarant hereby declares that all of the property described on Exhibit "A" and any Additional Property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

The Properties form a residential community commonly known as "Giverny at Le Jardin," which is a portion of a larger master planned community commonly known as "Le Jardin." As such, the Properties are subject to the Master Declaration in addition to this Declaration. At the recording of this Declaration, the Le Jardin community consists of two residential Villages (as defined in the Master Declaration): Giverny at Le Jardin (which is subject to this Declaration) and Tapestry at Le Jardin (which is subject to the Declaration of Covenants, Conditions and Restrictions for Tapestry at Le Jardin). Giverny at Le Jardin and Tapestry at Le Jardin each have their own homeowner associations which manage, operate and control the common area and amenities located within their respective communities and provide architectural oversight over their respective communities.

This document does not and is not intended to create a condominium within the meaning of O.C.G.A. §44-3-70, *et seq.* nor a property owners' development within the meaning of O.C.G.A. §44-3-220, *et seq.*

## ARTICLE 1: DEFINITIONS

The terms in this Declaration and in the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Additional Property": All of that certain real property which is more particularly described on Exhibit "B", which is attached and incorporated herein by this reference, and which real property is subject to annexation to the terms of this Declaration in accordance with Article 7.

1.2 "ARB": The Architectural Review Board, as described in Section 9.2.

1.3 "Area of Common Responsibility": The Common Area, together with any additional areas for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, or other applicable covenant, contract, or agreement.

1.4 "Articles of Incorporation" or "Articles": The Articles of Incorporation of Giverny at Le Jardin Owners Association, Inc. as filed with the Secretary of State of the State of Georgia, as they may be amended.

1.5 "Association": Giverny at Le Jardin Owners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

1.6 "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under Georgia corporate law.

1.7 "By-Laws": The By-Laws of Giverny at Le Jardin Owners Association, Inc. attached as Exhibit "C," as they may be amended.

1.8 "Capital Reserve Fee": The Capital Reserve Fee as defined in Section 8.11 below.

1.9 "Common Area": All real and personal property, including easements and licenses, which the Association owns, leases or holds possessory or use rights in for the common use, benefit, and enjoyment of the Owners. The term also shall include any Exclusive Common Area, as defined below.

1.10 "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

1.11 "Community Foundation Fee": The Community Foundation Fee as defined in Section 8.12 below.

1.12 "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the ARB provided that such standard is not lower than the standard established pursuant to the Master Declaration.

1.13 "Cost Sharing Agreement": Any agreement, contract or covenant between the Association and an owner or operator of property adjacent to, in the vicinity of, or within the Properties or Le Jardin for the allocation of expenses for amenities and/or services that benefit both the Association and the owner or operator of such property.

1.14 "Days": Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regular business day.

1.15 "Declarant": Le Jardin, LLC, a Georgia limited liability company, or any successor, successor-in-title, or assign who holds or takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided however, there shall be only one (1) Person entitled to exercise the rights and powers of the "Declarant" hereunder at any time.

1.16 "Declarant-Related Entity": Any Person or entity which is a parent, subsidiary or affiliate of the Declarant, and/or in which the Declarant or any parent, subsidiary or affiliate of the Declarant or any officer, director, shareholder, partner, member, manager or trustee of any of the foregoing, owns, directly or indirectly, not less than thirty-three percent (33%) of such entity.

1.17 "Design Guidelines": The design, architectural and construction guidelines and application and review procedures applicable to all or any portion of the Properties promulgated and administered pursuant to Article 9 and which may be entitled or referred to as the "Design Guidelines for Giverny at Le Jardin" or by some other designation.

1.18 "Detention Facility": Any area within the Properties serving as a detention structure or facility, including but not limited to lakes, berms, swales or any facility designated as a "detention pond" or a "proposed detention facility" on a recorded plat of all or any portion of the Properties.

1.19 "Development Period": The period of time during which the Declarant owns any property which is subject to this Declaration, any Additional Property or has the unilateral right to subject Additional Property to this Declaration pursuant to Section 7.1. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public Records.

1.20 "Exclusive Common Area": A portion of the Common Area intended for the exclusive use or primary benefit of one (1) or more, but less than all, Neighborhoods or Lots, as more particularly described in Article 2.

1.21 "General Assessment": Assessments levied on all Lots subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 8.1 and 8.2.

1.22 "Giverny at Le Jardin": That certain residential community located on the Properties subject to this Declaration.

1.23 "Governing Documents": The Master Documents, Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, all Design Guidelines, the rules of the Association, the Lake Use Restrictions, all Cost Sharing Agreements, and all additional covenants governing any portion of the Properties or any of the above, as each may be supplemented and amended from time to time.

1.24 "Lake": Any body of water located within the Properties and subject to the Lake Use Restrictions.

1.25 "Lake Use Restrictions": Use restrictions, rules and procedures for any Lake promulgated by the Association, as amended.

1.26 "Le Jardin": That certain residential community commonly referred to as "Le Jardin" and located on the property described on Exhibits "A" and "B" of the Master Declaration in Fulton County, Georgia of which Giverny at Le Jardin is a "Village" (as defined in the Master Declaration).

1.27 "Lot": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include property owned by the Association or property dedicated to the public.

In the case of an unplatted parcel of land, the parcel shall be deemed to be a single Lot until such time as a subdivision plat or condominium plat is filed with respect to all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Lots determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

1.28 "Majority": Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.29 "Master Association": Le Jardin Community Association, Inc. a Georgia nonprofit corporation, its successors and assigns.

1.30 "Master Declarant": The declarant under the Master Declaration.

1.31 "Master Documents": The Declaration of Covenants, Conditions and Restrictions for Le Jardin filed of record on April 13, 2006 in Deed Book 42355, Page 567, et seq., in the Public Records (the "Master Declaration"), the by-laws, articles of incorporation, design guidelines, and rules and regulations, if any, of the Master Association, as each may be supplemented and amended from time to time.

1.32 "Master Plan": The land use plan or development plan for "Le Jardin," as such plan may be amended from time to time, which plan includes the property described on Exhibit "A", all or a portion of the Additional Property described on Exhibit "B" that Declarant may from time to time anticipate subjecting to this Declaration, and that certain residential community commonly known as "Tapestry at Le Jardin." Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article 7.

1.33 "Member": A Person subject to membership in the Association pursuant to Section 3.1.

1.34 "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

1.35 "Mortgagee": A beneficiary or holder of a Mortgage.

1.36 "Neighborhood": A separately developed area within the Properties, in which the Owners of Lots may have common interests other than those common to all Members of the

Association. For example, and by way of illustration and not limitation, a grouping of single-family detached dwellings may constitute a separate Neighborhood, or a Neighborhood may be comprised of more than one (1) housing type with other features in common and may include noncontiguous parcels of property. Neighborhood boundaries may be established and modified as provided in Section 3.3.

1.37 "Neighborhood Assessments": Assessments levied against the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 8.1 and 8.3.

1.38 "Neighborhood Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Lots within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplemental Declarations applicable to such Neighborhood(s).

1.39 "Owner": One (1) or more Persons who hold the record title to any Lot, including the Declarant, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. If a Lot is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.

1.40 "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.

1.41 "Properties": The real property described on Exhibit "A" as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 7.

1.42 "Public Records": The Clerk of the Superior Court of Fulton County, Georgia or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.43 "Special Assessment": Assessments levied in accordance with Section 8.5.

1.44 "Specific Assessment": Assessments levied in accordance with Section 8.6.

1.45 "Supplemental Declaration": An instrument filed in the Public Records which subjects Additional Property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

## ARTICLE 2: PROPERTY RIGHTS

2.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Lot, subject to:

(a) This Declaration and all other Governing Documents;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(d) The right of the Association to rent, lease or reserve any portion of the Common Area to any Owner for the exclusive use of such Owner and his or her respective lessees, invitees, and guests upon such conditions as may be established by the Board;

(e) The right of the Board to suspend the right of an Owner to use any recreational and social facilities within the Common Area and Exclusive Common Area pursuant to Section 4.3;

(f) The right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any facility situated upon the Common Area;

(g) The right of the Board to permit use of any facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of reasonable use fees, if any, established by the Board;

(h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(i) The right of the Association, acting through the Board, to dedicate or transfer all or any portion of the Common Area, subject to any approval requirements set forth in the Governing Documents;

(j) The rights of certain Owners to the exclusive use, access and enjoyment of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2.3; and

(k) The right of the Declarant to conduct activities and establish facilities within the Properties as provided in Article 13.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot; provided however, the Owner shall remain responsible for payment of all assessments and other charges.

2.2 Private Streets. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to, over and across any private streets and roads within the Properties ("Private Streets"), whether or not such Private Streets are Common Area or whether or not such Private Streets are located on individual Lots, for the purpose of ingress and egress to public rights-of-way. The rights and nonexclusive easements granted herein are appurtenant to the title to each Lot, subject to:

(a) This Declaration and all other Governing Documents;

(b) The right of the Declarant, so long as the Declarant owns the Private Streets, to adopt, amend and repeal rules regulating the use and enjoyment of the Private Streets, provided that the Declarant shall not by the adoption of any rule or regulation bar access of the Owners across the Private Streets;

(c) The right of the Declarant to dedicate all or any part of Private Streets;

(d) The right of the Declarant to mortgage, pledge, or hypothecate any or all of the Private Streets as security for money borrowed or debts incurred, provided that the Declarant shall not subject the

Private Streets to any security instrument without obtaining the agreement of the lender to subordinate its interest in the Private Streets to the easements for the Owners contained in this Section; and

(e) The rights of the Declarant and the Association to maintain the Private Streets.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable.

2.3 Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of specified Lots or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, gates, recreational facilities, roads, landscaped medians and cul-de-sacs, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed against the Owners of Lots to which the Exclusive Common Areas are assigned either as a Neighborhood Assessment or as a Specific Assessment, as applicable.

During the Development Period, any Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned, in the deed by which the Common Area is conveyed to the Association, or in this Declaration, or any Supplemental Declaration and/or on the subdivision plat relating to such Common Area. Any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Lots and/or Neighborhoods during the Development Period. Following the termination of the Development Period, a portion of the Common Area may be assigned as Exclusive Common Area of particular Lots or a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon approval of the Board and the vote of Members holding a Majority of the total Class "A" votes in the Association, including, if applicable, a Majority of the Class "A" votes within the Neighborhood(s) to which the Exclusive Common Area is assigned, if previously assigned, and within the Neighborhood(s) to which the Exclusive Common Area is to be assigned or reassigned. Any reassignment of an Exclusive Common Area shall be set forth in a Supplemental Declaration executed by the Declarant and/or the Board, as appropriate, or shall be shown on a revised subdivision plat relating to such Exclusive Common Area.

The Association may, upon approval of a Majority of the Class "A" votes within the Neighborhood(s) to which any Exclusive Common Area is assigned, permit Owners of Lots in other Neighborhoods to use all or a portion of such Exclusive Common Area upon payment of reasonable use fees, which fees shall be used to offset the Neighborhood Expenses or Specific Assessments attributable to such Exclusive Common Area.

2.4 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of other real property which may or may not be subject to this Declaration.

2.5 Condemnation. The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. Whenever any part of the Common Area shall be taken by or conveyed under threat of condemnation to any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance. The Board may convey Common Area under threat of condemnation only if approved by Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, the written consent of the Declarant. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

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 on the remaining land included in the Common Area to the extent available, unless within sixty (60) Days after such taking, Members holding at least sixty-seven percent (67%) of the total Class "A" votes of the Association and, during the Development Period, the Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and the ARB. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

2.6 View Impairment. Neither the Declarant nor the Association guarantees or represents that any view from Lots over and across the Common Area, including any Lake, will be preserved without impairment. The Association shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole discretion, to add trees and other landscaping or to install improvements or barriers (both natural and artificial) to the Common Area from time to time. Any such additions or changes may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner, by acceptance of a deed, acknowledges that any view from the Lot as of the date of the purchase of the Lot may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping or other types of improvements or barriers (both natural and artificial) on the Common Area.

## ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner shall be a Member of the Association. There shall be only one (1) membership per Lot. If a Lot is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2(d) and in the By-Laws. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of such Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.

3.2 Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Each Class "A" Member shall have one (1) equal vote for each Lot in which he or she holds the interest required for membership under Section 3.1; provided however, there shall be only one (1) vote per Lot

and no vote shall be exercised for any property which is exempt from assessment under Section 8.10. All Class "A" votes shall be cast as provided in Section 3.2(d) below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint the members of the Board of Directors until the first to occur of the following:

(i) when one hundred percent (100%) of the total number of Lots permitted by the Master Plan for the property described on Exhibits "A" and "B" have certificates of occupancy issued thereon and have been conveyed to Persons other than Declarant;

(ii) December 31, 2020; or

(iii) when, in its discretion, the Class "B" Member so determines and voluntarily relinquishes such right.

At such time, the Class "B" membership shall terminate, and the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot which it owns. After termination of the Class "B" membership, the Declarant shall have a right to disapprove actions of the Board, the ARB, and committees as provided in the Declaration.

(c) Additional Classes of Membership. The Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Lots within any Additional Property made subject to this Declaration pursuant to Article 7, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

(d) Exercise of Voting Rights. If there is more than one (1) Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it. No vote shall be exercised on behalf of any Lot if any assessment for such Lot is delinquent.

3.3 Neighborhoods. Every Lot shall be located within a Neighborhood; provided however, unless and until additional Neighborhoods are established, the Properties shall consist of one (1) Neighborhood. The Declarant, in its sole discretion, may establish Neighborhoods within the Properties by designation on Exhibit "A" to this Declaration, a Supplemental Declaration, or a plat. During the Development Period, the Declarant may unilaterally amend this Declaration, any Supplemental Declaration, or any plat from time to time to assign property to a specific Neighborhood, to redesignate Neighborhood boundaries, or to remove property from a specific Neighborhood.

The Owner(s) of a Majority of the total number of Lots within any Neighborhood may at any time petition the Board of Directors to divide the property comprising the Neighborhood into two (2) or more Neighborhoods. Such petition shall be in writing and shall include a survey of the entire parcel which indicates the proposed boundaries of the new Neighborhoods or otherwise identifies the Lots to be included within the proposed Neighborhoods. Such petition shall be deemed granted thirty (30) Days following the filing of all required documents with the Board unless the Board of Directors denies such application in writing within such thirty (30) Day period. The Board may deny an application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be

divided into separate Neighborhoods. All applications and copies of any denials shall be filed with the books and records of the Association. The Owners requesting the division shall be responsible for any expenses incurred with respect to implementing a division of a Neighborhood, including but not limited to, a Supplemental Declaration or revised plat, if the application is approved.

Any Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Lots in such Neighborhood and, upon the affirmative vote, written consent, or a combination thereof, of Owners of a Majority of the Lots within the Neighborhood, the Association may, in its sole discretion, provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided any such administrative charge shall apply at a uniform rate per Lot to all Neighborhoods receiving the same service), shall be assessed against the Lots within such Neighborhood as a Neighborhood Assessment pursuant to Article 8 hereof.

3.4 Master Association. Each Owner, by acceptance of a deed to a Lot, acknowledges and agrees that pursuant to the Master Documents, all Owners shall be members of the Master Association and shall be subject to the Master Documents. Each Owner acknowledges that, pursuant to the Master Documents, Giverny at Le Jardin has been or may be designated as a "Village" and that the Owners may be entitled to elect members of the Board of Directors of the Master Association according to the terms and conditions of the Master Documents. If there are conflicts between the provisions of Georgia law, the Master Declaration, the Declaration, the By-Laws, and the Articles of Incorporation, the provisions of Georgia law, the Declaration, the Articles of Incorporation, the By-Laws and the Master Declaration (in that order) shall prevail.

## ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Georgia.

4.2 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property, including, without limitation, Lakes, clubhouse, security gatehouse, and gatekeeper's cottage, parks and open spaces. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits "A" or "B," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any Lake, pond or other body of water that may be conveyed. Upon written request of Declarant, the Association shall reconvey to Declarant any portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines, provided that the reconveyance has no material adverse effect upon the rights of the Owners.

The Association agrees that the Common Area, including all improvements thereon, shall be conveyed in its "where is, as is" condition and without recourse, and Declarant disclaims and makes no

representations, warranties or other agreements express or implied with respect thereto, including without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and representations or warranties regarding the conditions, design, construction, accuracy, completeness, adequacy of the size or capacity in relation to utilization or the future economic performance or operations of the Common Area. No claim shall be made by the Association or any Owner relating to the condition, operation, or completeness of the Common Area or for incidental or consequential damages arising therefrom. Declarant will transfer and assign to the Association, without recourse, all warranties which it receives from manufacturers and suppliers relating to any of the Common Area which exist and are assignable.

4.3 Enforcement. The Board or any committee established by the Board, with the Board's approval, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in Section 3.24 of the By-Laws. Such sanctions may include, without limitation:

(a) imposing monetary fines which shall constitute a lien upon the Lot of the violator;

(b) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;

(c) suspending an Owner's right to vote;

(d) suspending any Person's right to use any recreational facilities within the Common Area and any part of the Exclusive Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot; and

(e) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association.

In the event that any occupant, guest or invitee of a Lot violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such occupant, guest or invitee and/or the Owner of the Lot that the violator is occupying or visiting. If a fine is imposed, the fine may first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.

In addition, the Board, or the covenants committee if established, may elect to enforce any provision of the Governing Documents by exercising self-help (specifically including, but not limited to, the filing of liens in the Public Records for non-payment of assessments and other charges, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, or the correction of any maintenance, construction or other violation of the Governing Documents) without the necessity of compliance with the procedures set forth in the By-Laws. The Association may levy Specific Assessments to cover all costs incurred in exercising self-help and in bringing a Lot into compliance with the terms of the Governing Documents.

The Association may also elect to enforce any provisions of the Governing Documents by suit at law to recover monetary damages or in equity to enjoin any violation or both without the necessity of compliance with the procedures set forth in the By-Laws.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs, incurred in such action, regardless of whether suit is filed and including any appeals.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

The Association may enforce the provisions of the Master Documents on the Properties for the benefit of the Master Association, the Association and their respective Members. In addition, the Association, by contract or other agreement, may enforce county, city, state and federal laws and ordinances, if applicable, and permit local and other governments to enforce laws and ordinances on the Properties for the benefit of the Association and its Members.

4.4 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership

4.5 Governmental Interests. During the Development Period, the Declarant may designate sites within the Properties for utility facilities, parks, streets, and other public or quasi-public facilities. No membership approval shall be required for such designation. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner of such property consents.

4.6 Indemnification. The Association shall indemnify every officer, director, ARB member and committee member against all damages, liabilities, and expenses, including reasonable attorneys fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, ARB member or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and Georgia law.

The officers, directors, ARB members and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors, ARB members, and committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, ARB members or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, ARB member and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, ARB member or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general

liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7 Dedication of or Grant of Easements on Common Area. The Association may dedicate or grant easements across portions of the Common Area to Fulton County, Georgia, or to any other local, state, or federal governmental or quasi-governmental entity, or to any public or private utility company.

4.8 Security. Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. These activities may include the use of surveillance cameras, roving security and perimeter fencing. Each Owner acknowledges that the use of such security measures, particularly surveillance cameras, may result in certain portions of a Lot being viewed and monitored by third parties. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or measure, including, without limitation, the operation of an entry gate, gate house, gatekeeper's cottage, gate into a particular Neighborhood and any other facility, mechanism or system for limiting access to the Properties, cannot be compromised or circumvented, nor that any such system or security measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. No representation or warranty is made that the lighting facilities or systems (including the placement thereof) will adequately illuminate or attempt to adequately illuminate all of the Common Areas, or that such facilities or systems will be designed with safety measures in mind. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot that the Master Association, the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers or guarantors of safety and security within the Properties and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

4.9 Restricted Access Fence and Gates. Access to all or any portion of the Properties may, at the Declarant's or Board of Director's sole discretion, be restricted by a fence and one or more gates located along the perimeter of the Properties. Individual Neighborhoods may also have their own access gates. Vehicular access into the Properties may be restricted by staffed, electronically operated or other controlled access entry gates located at the entrances into the Properties or Neighborhoods, and pedestrian access may be restricted by pedestrian gates at other points as well. The restricted access gates may or may not be staffed, at the discretion of the Declarant or Board of Directors. Any such gate staffing may be modified or eliminated at any time without notice. The use and operation of any restricted access fence and gate may be limited or eliminated from time to time by the Declarant or the Board of Directors.

4.10 Relationship With Tax-Exempt Organizations / Common Area Open to the Public.

(a) The Declarant or the Association may create, enter into agreements, leases or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to non-profit, tax-exempt organizations. The Association may contribute money, real or personal property or services to any such entity, but such contribution shall not affect the obligation of Owners to pay a Community Foundation Fee to Le Jardin Cultural Foundation, Inc. as set forth in Section 8.12. Any such contribution by the Association (i.e. not the Community Foundation Fee) shall be a Common Expense and included as a line

item in the Association's annual budget. For the purposes of this Section and Section 8.12 a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501(c)(3) or 501(c)(4) thereof.

(b) Portions of the Common Area may be used by such tax-exempt organizations, including, without limitation, the Le Jardin Cultural Foundation, Inc., for the purpose of displaying art, sculptures and gardens. In connection therewith, tax-exempt organizations may be authorized to host scheduled tours, festivals or other similar events which are open to the general public from time to time. The Association shall provide advance notice of such tours, festivals and similar events which may be open to the public to the Owners through the standard means used to communicate to Owners. Furthermore, such tax-exempt organizations may be authorized to host schools and other organizations from time to time for the purpose of viewing such art, sculpture and gardens located on the Common Area.

4.11 Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense or a Neighborhood Expense, depending on whether the service or facility is provided to all Lots or only the Lots within a specified Neighborhood. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. As an alternative, the Association may arrange for the costs of the services and facilities to be billed directly to Owners by the provider(s) of such services and facilities. By way of example, some services and facilities which may be provided include concierge service, limousine service, landscape maintenance, access gate operating and maintenance, garbage collection, pest control service, cable, digital, satellite or similar television service, internet service, intranet, wi-fi and other computer related services, security, caretaker, fire protection, utilities, and similar services and facilities. The Board, without the consent of the Class "A" Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association.

4.12 Rezoning. No Owner or any other Person may apply or join in an application to amend, vary or modify any governmental rule, regulation or zoning ordinance imposed by Fulton County, Georgia, applicable to or rezone or apply for any zoning variance or waiver as to all or any portion of the Properties without the prior written consent of Declarant. Each Person that acquires any interest in the Properties acknowledges that Le Jardin is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or challenge (a) changes in uses or density of property outside Giverny at Le Jardin in which such Person owns a Lot, or (b) changes in the Master Plan relating to property outside Giverny at Le Jardin in which such Person owns a Lot. Declarant may apply for such rezoning as to any portion of the Properties owned by it at any time.

4.13 Presence and Management of Wildlife. Each Owner and occupant, and each tenant, guest and invitee of any Owner or occupant acknowledges that the Properties are located adjacent to and in the vicinity of wetlands, bodies of water and other natural areas. Such areas may contain wildlife, including without limitation, deer, opossums, reptiles, and snakes. Neither the Association, the Board, the original Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence of such wildlife on the Properties. Each Owner and occupant of a Lot and each tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of such wildlife and further acknowledges that the Association, the Board, the original Declarant or any successor Declarant

have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the presence of such wildlife.

4.14 Lake. Neither the Association, the Master Association, the original Declarant, nor any successor Declarant shall be held liable for any loss or damage by reason of use of any Lake for any purpose by Owners, their invitees, licensees, and tenants. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Directors, ARB and committees, Declarant, and any successor Declarant are not insurers and that each Person using any Lake shall do so only as permitted under the Lake Use Restrictions and applicable governmental laws, ordinances, rules and regulations. Each Person assumes all risks of personal injury, and loss or damage to property, including Lots, resulting from or associated with use of any Lake. In addition, the Association shall not be responsible for maintaining, increasing or decreasing the water level within any Lake or other water body or removing vegetation from any Lake or other water body.

## ARTICLE 5: MAINTENANCE

5.1 Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which may include, but need not be limited to:

(i) all Common Area;

(ii) the Giverny at Le Jardin entry feature, the primary access gate, access gates into Neighborhoods (if any), the gate house and the gatekeeper's cottage located at the main entrance of Giverny at Le Jardin (but excluding the Le Jardin entry feature, the landscaping performed by the Master Association and other maintenance performed by the Master Association);

(iii) all Private Streets located within Giverny at Le Jardin;

(iv) all recreational amenities located within Giverny at Le Jardin from time to time, including without limitation, a clubhouse, tennis courts, all-sports courts, fitness center, promenade decks, pools and swimming pools;

(v) any Lake;

(vi) all landscaping and other flora, gardens, artwork (temporary and permanent), parks, ponds, structures, and improvements, including any parking areas, sidewalks or Neighborhood entry feature, situated upon the Common Area;

(vii) all furnishings, equipment and other personal property of the Association;

(viii) any landscaping and other flora, gardens, artwork (temporary and permanent), parks, sidewalks, buffers, entry features, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board;

(ix) such additional portions of any property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, or any contract or agreement for maintenance thereof entered into by the Association;

(x) all Detention Facilities, ponds, Lakes, streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith; and

(xi) any wetlands or other natural areas which shall remain in its natural state located within the Properties; provided, however, that such natural areas do not have to be maintained to the same standard as other areas maintained by the Association.

The Association may, as a Common Expense, maintain other property and improvements which it does not own, including, without limitation, Private Streets, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members holding sixty-seven percent (67%) of the Class "A" votes in the Association and during the Development Period the Declarant agree in writing to discontinue such operation.

(c) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner or the Master Association or (ii) such property is dedicated to any local, state, or federal government or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Development Period except with the written consent of the Declarant.

(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Lots within the Neighborhood(s) to which the Exclusive Common Areas are assigned, or a Specific Assessment against the particular Lots to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder. If all Lots within a Neighborhood have similar Exclusive Common Areas, the Association may cumulate such expenses and assess the costs as Neighborhood Assessments against all Lots within such Neighborhood.

(e) The Association may maintain, repair, and replace the landscaping and other flora located on each Lot (but exclusive of any screened or fenced areas and the dwelling itself) within any Neighborhood designated in the Governing Documents to receive such services. The Association may maintain any

portion of the storm drainage system located on a Lot within any Neighborhood designated in the Governing Documents to receive this service; provided however, any drain located on such Lot shall be kept clear of debris by the Owner. All costs associated with such maintenance, repair and replacement shall be a Neighborhood Expense assessed as a Neighborhood Assessment against the Lots within the designated Neighborhood(s). If elected by the Association, the Association's obligations pursuant to this subsection shall commence as to each Lot on the later of: (i) the date on which the Association is notified in writing that a certificate of occupancy has been issued for a dwelling on such Lot; or (ii) the date on which such Lot has been conveyed to a Person.

(f) The Association may maintain each Lot during the period of time which the Lot does not contain a residence. Such maintenance may be referred to as "Lot Maintenance" in the purchase agreement for a Lot. Such maintenance may include basic lawn mowing and trash removal. The cost of such Lot maintenance, if any, shall be a specific assessment allocated to the Owner of such Lot.

(g) In the event that the Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Community-Wide Standard, the Declarant or the Master Association (pursuant to the terms and conditions of the Master Documents) may, upon not less than ten (10) Days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Lot, and all structures, parking areas, driveways, sprinkler and irrigation systems, landscaping and other flora, and other improvements on the Lot in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association. Each Owner shall also maintain the driveway and mailbox serving his or her Lot and all landscaping located in the right-of-way immediately adjacent to the Owner's Lot. Additionally, each Owner shall be responsible for keeping any storm drain(s) located upon his or her Lot clear of debris. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 8.6(b). The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry under this Section shall not constitute a trespass.

5.3 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Neither the Association nor any Owner shall be liable for any damage or injury occurring on, or arising out of the condition of, property which such Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.4 Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots which serves and/or separates any two (2) adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) Damage and Destruction If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

5.5 Cost Sharing Agreements. Adjacent to or in the vicinity of the Properties, there may be certain residential, nonresidential or recreational areas, including without limitation single family residential developments, retail, commercial, business areas and recreational areas, which are not subject to this Declaration and which are neither Lots nor Common Area as defined in this Declaration (hereinafter "adjacent properties"). The owners of such adjacent properties shall not be Members of the Association, shall not be entitled to vote, and shall not be subject to assessment under Article 8 of this Declaration.

The Association may enter into one (1) or more Cost Sharing Agreements with the owners or operators of portions of the adjacent properties:

(a) to obligate the owners or operators of such adjacent properties to perform and/or to share in certain costs associated with, the maintenance, repair, replacement and insuring of portions of the Area of Common Responsibility, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the owners within the Properties;

(b) to obligate the Association to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of such adjacent properties, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the owners within the Properties; and/or

(c) to establish rules and regulations regarding the use of areas that benefit jointly the owners or operators of such adjacent properties and the owners within the Properties.

The owners or operators of such adjacent properties shall be subject to assessment by the Association only in accordance with the provisions of such Cost Sharing Agreement(s) If the Association is obligated to share costs incurred by the owners of such adjacent properties, such payments by the Association shall be deemed to constitute Common Expenses of the Association unless the Cost Sharing Agreement provides otherwise. The owners or operators of the adjacent properties shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided herein.

## ARTICLE 6: INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on all public ways located within the Properties and the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least one million dollars ($1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6th) of the annual General Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance.

In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency ("FEMA") as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area must be maintained in the amount of one hundred percent (100%) of current "replacement cost" of all affected improvements and other insurable property or the maximum limit of coverage available, whichever is less.

In addition, the Association may obtain and maintain property insurance on the insurable improvements within any Neighborhood in such amounts and with such coverages as the Owners in such Neighborhood may agree upon pursuant to Section 3.3. Any such policies shall provide for a certificate of insurance to be furnished to the Owner of each Lot insured upon request.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the General Assessment, except that (i) premiums for property insurance obtained on behalf of a Neighborhood shall be charged to the Owners of Lots within the benefitted Neighborhood as a Neighborhood Assessment; and (ii) premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefitted unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense and

assessed in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss resulted from the negligence or willful misconduct of one (1) or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 8.6.

(b) Policy Requirements. The Association shall arrange for periodic reviews of the sufficiency of insurance coverage by one (1) or more qualified Persons, at least one (1) of whom must be familiar with insurable replacement costs in the Atlanta, Georgia area.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Member upon written request. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a).

(i) All insurance coverage obtained by the Board shall:

(1) be written with a company authorized to do business in the State of which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(2) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners of Lots within the Neighborhood and their Mortgagees, as their interests may appear;

(3) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(4) contain an inflation guard endorsement;

(5) include an agreed amount endorsement, if the policy contains a co-insurance clause; and

(6) an endorsement requiring at least thirty (30) Days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

(ii) In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(1) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and manager, the Owners and their tenants, servants, agents, and guests;

(2) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(3) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(4) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(5) a cross liability provision; and

(6) a provision vesting the Board with the exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. In the event of any insured loss covered by insurance held by the Association, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition existing prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and during the Development Period the Declarant decide within sixty (60) Days after the loss either (i) not to repair or reconstruct or (ii) to construct alternative improvements.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) Day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional Days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or the Neighborhood, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2 Owners' Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible. If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefitted Lot and the Owner thereof pursuant to Section 8.6.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures or landscaping on or comprising his or her Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure or landscaping consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall

clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Lots within such Neighborhood and for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

6.3 Limitation of Liability. Notwithstanding the duty of the Association to maintain and repair portions of the Common Area, neither the Association, its Board of Directors, its successors or assigns, nor any officer or director or committee member, employee, agent, contractor (including the management company, if any) of any of them shall be liable to any Member or any member of a Member's immediate household for any injury or damage sustained in the Area of Common Responsibility, the Common Area or other area maintained by the Association, or for any injury or damage caused by the negligence or misconduct of any Members or their family members, guests, invitees, agents, servants, contractors or lessees, whether such loss occurs in the Common Area or in individual Lots.

Each Owner, by virtue of the acceptance of title to his or her Lot, and each other Person having an interest in or right to use any portion of the Properties, by virtue of accepting such interest or right to use, shall be bound by this Section and shall be deemed to have automatically waived any and all rights, claims, demands, and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed under this Section.

## ARTICLE 7: ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1 Annexation by Declarant. Until fifteen (15) years after the recording of this Declaration in the Public Records, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the Additional Property. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of the Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever. No property shall be subjected to this Declaration unless, simultaneously therewith or prior thereto, such property is subjected to the Master Declaration.

7.2 Annexation by Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members holding a Majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and, during the Development Period, the written consent of the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the president and the secretary of the Association, and by the owner of the property being annexed, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein. No property shall be subjected to this Declaration unless, simultaneously therewith or prior thereto, such property is subjected to the Master Declaration.

7.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period for the purpose of removing any portion of the Properties from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall execute a written consent to such withdrawal.

7.4 Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property for such purposes as deemed appropriate in the Declarant's sole discretion, including but not limited to modifications to reflect the different character and intended use of such property.

7.5 Amendment. This Article shall not be amended during the Development Period without the prior written consent of Declarant.

## ARTICLE 8: ASSESSMENTS

8.1 Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be four (4) types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Lots; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Lots within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 8.5; and (d) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorneys fees, shall be a charge and continuing lien upon each Lot against which the assessment or charge is made until paid, as more particularly provided in Section 8.7. Each such assessment or charge, together with interest, late charges, costs, and reasonable attorneys fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer or designee setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, including Exclusive Common Area reserved for such Owner's use, abandonment or leasing of such Owner's Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action taken by the Association or Board.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

8.2 Computation of General Assessments. At least thirty (30) Days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, which may include a contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.4.

General Assessments shall be levied equally against all Lots subject to assessment; provided that the Association may vary, at its sole discretion, the amount of the General Assessment charged to non-improved Lots and improved Lots. For purpose of this Section, an improved Lot shall be defined as a Lot with a completed home.

The assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including any reserves. In determining the level of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year, and any income expected to be generated from any Cost Sharing Agreement.

During the Development Period, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or provision of services and materials, which shall be treated as a loan unless otherwise designated by the Declarant, in the Declarant's discretion. Any such anticipated payment or provision by the Declarant shall be disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances

obligate the Declarant to continue such payments in future years unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner at least thirty (30) Days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after the date of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. In such event or if the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year. The Board shall send a copy of the revised budget to each Owner at least thirty (30) Days prior to its becoming effective The revised budget shall become effective unless disapproved in accordance with the above procedure.

8.3 Computation of Neighborhood Assessments. At least thirty (30) Days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, or the By-Laws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association and, upon approval of Owners in accordance with Section 3.3, any additional costs shall be added to such budget. In addition, any excess expenses over and above the base amount for similar Neighborhood expenses paid through the General Assessment shall be added to such budget. Such budget may include a contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood. Neighborhood Expenses shall be allocated equally among all Lots within the Neighborhood(s) benefitted thereby and levied as a Neighborhood Assessment.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner of a Lot in the Neighborhood at least thirty (30) Days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by Owners of a Majority of the Lots in the Neighborhood to which the Neighborhood Assessment applies and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least ten percent (10%) of the Lots in such Neighborhood. This right to disapprove shall apply only to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the Owners within any Neighborhood disapprove any line item of a Neighborhood budget, the Association shall not be obligated to provide the services anticipated to be funded by such line item of the budget. If the Board fails for any reason to determine a Neighborhood budget for any year, then until

such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

All amounts which the Association collects as Neighborhood Assessments shall be expended solely for the benefit of the Neighborhood for which they were collected and shall be accounted for separately from the Association's general funds.

8.4 Reserve Budget. The Board may, in its sole discretion, annually prepare reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the general and Neighborhood budgets reserve amounts sufficient to meet the projected needs of the Association.

8.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against all Lots, if such Special Assessment is for Common Expenses, or against the Lots within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Special Assessments shall be allocated equally among all Lots subject to such Special Assessment. Any Special Assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes allocated to Lots which will be subject to such Special Assessment and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after the date of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.6 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot or Lots as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, concierge service, limousine service, landscape maintenance, garbage collection, pest control service, cable, digital, satellite or similar television service, internet service, intranet, wi-fi and other computer related services, security, caretaker, fire protection, utilities, and similar services and facilities), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;

(b) to cover the costs associated with maintenance, repair, replacement and insurance of any Exclusive Common Area assigned to one (1) or more Lots;

(c) to cover all costs incurred in bringing the Lot(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; and

(d) to cover all costs incurred by the Association to maintain each Lot during the period of time which the Lot does not contain a residence as set forth in Section 5.1(f) of this Declaration.

In addition, fines levied by the Association pursuant to Section 4.3 shall constitute Specific Assessments

The Association may also levy a Specific Assessment against the Lots within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and rules; provided however, the Board shall give prior written notice to the Owners of Lots in the Neighborhood and an opportunity for such Owners to be heard before levying any such assessment.

8.7 Lien for Assessments. The Association shall have a lien against each Lot to secure payment of assessments and other charges, as well as interest at a rate to be set by the Board (subject to the maximum interest rate limitations of Georgia law), late charges in such amount as the Board may establish (subject to the limitations of Georgia law), costs of collection and reasonable attorneys fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, and (c) the lien of the Master Association for delinquent assessments and other charges due under the Master Documents. Such lien may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Declarant or the Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Lot owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall remain the personal obligation of the owner of the Lot prior to the foreclosure, and, unless and until collected from such prior owner, shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 8.8, including such acquirer, its successors and assigns.

All other Persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

8.8 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the later of: (i) date which the Lot is conveyed to a Person other than the Declarant or Declarant-Related Entity, (ii) the month in which the Board first determines a budget and levies assessments pursuant to this Article, or (iii) the month in which roads, water lines, sewer lines, electricity lines and telephone lines are available at the boundary of a Lot. The first annual General Assessment and Neighborhood Assessment, if any, levied on each Lot shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Lot and shall be due and payable at closing.

8.9 Failure to Assess. Failure of the Board to establish assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a

release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.10 Exempt Property. The following property shall be exempt from payment of General Assessments, Neighborhood Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1;

(b) Any property dedicated or otherwise conveyed to and accepted by any governmental authority or public utility; and

(c) Any property that is owned by a charitable nonprofit corporation or public agency whose primary purposes include the acquisition and preservation of open space for public benefit and held by such agency or organization for such recreational and open space purposes.

8.11 Capitalization of Association. Upon acquisition of record title to a Lot by the first Owner thereof and all subsequent Owners other than the Declarant or a Declarant-Related Entity or upon occupancy of a Lot by a Person other than the Declarant or Declarant-Related Entity, a contribution shall be made by or on behalf of the purchaser or occupant to the capital reserves of the Association in an amount equal to one-half of the annual General Assessment per Lot for that year (the "Capital Reserve Fee"). This Capital Reserve Fee shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This Capital Reserve Fee shall be collected and disbursed to the Association at closing of the purchase and sale of the Lot to the first Owner and each subsequent closing, or if the obligation to make the Capital Reserve Fee arises by virtue of occupancy of a Lot by a Person other than Declarant, the Capital Reserve Fee shall be paid immediately upon demand by the Association. This Capital Reserve Fee may be referred to as a portion of the "initiation fee" set forth in the purchase agreement for a Lot. The Capital Reserve Fee shall be used by the Association to cover capital additions, capital improvements, capital replacements, and major maintenance type expenses. The Capital Reserve Fees shall be maintained in separate bank accounts and not commingled with funds used for operations of the Association. For the period of time from the commencement of operations of the Association through December 31, 2010, the Capital Reserve Fees may be used to fund deficits, if any, arising from the operations of the Association. Subsequent to December 31, 2010, the Capital Reserve Fees may not be used to fund operations for any reason.

8.12 Community Foundation Fee. Upon acquisition of record title to a Lot by the initial Owner and all subsequent Owners other than the Declarant or a Declarant-Related Entity, the Owner obtaining title to the Lot shall pay a community foundation fee (the "Community Foundation Fee") to the Le Jardin Cultural Foundation, Inc., a Georgia non-profit, tax-exempt organization, in an amount as set forth below:

(a) For the transfer of a Lot occurring during the calendar year 2006 or 2007, the Owner obtaining title to a Lot shall pay a Community Foundation Fee of either:

(i) $1,000 if the title to the Lot is being obtained by the initial Owner from the Declarant or a Declarant-Related Entity and the Lot is unimproved; or

(ii) $500 if the title to the Lot is being obtained by the initial Owner from the Declarant or a Declarant-Related Entity and the Lot is improved; or

(iii) Two percent (2%) of the purchase price of the Lot if the Lot is being obtained by a subsequent Owner and the Lot is unimproved; or

(iv) One-half of one percent (.005) of the purchase price of the Lot if the Lot is being obtained by a subsequent Owner and the Lot is improved.

(b) For the transfer of a Lot occurring during the calendar year 2008, the Owner obtaining title to a Lot shall pay a Community Foundation Fee of either:

(i) $2,000 if the title to the Lot is being obtained by the initial Owner from the Declarant or a Declarant-Related Entity and the Lot is unimproved; or

(ii) $1,000 if the title to the Lot is being obtained by the initial Owner from the Declarant or a Declarant-Related Entity and the Lot is improved; or

(iii) Two percent (2%) of the purchase price of the Lot if the Lot is being obtained by a subsequent Owner and the Lot is unimproved; or

(iv) One-half of one percent (.005) of the purchase price of the Lot if the Lot is being obtained by a subsequent Owner and the Lot is improved.

(c) For the transfer of a Lot occurring during the calendar year 2009, the Owner obtaining title to a Lot shall pay a Community Foundation Fee of either:

(i) $3,000 if the title to the Lot is being obtained by the initial Owner from the Declarant or a Declarant-Related Entity and the Lot is unimproved; or

(ii) $1,500 if the title to the Lot is being obtained by the initial Owner from the Declarant or a Declarant-Related Entity and the Lot is improved; or

(iii) Two percent (2%) of the purchase price of the Lot if the Lot is being obtained by a subsequent Owner and the Lot is unimproved; or

(iv) One-half of one percent (.005) of the purchase price of the Lot if the Lot is being obtained by a subsequent Owner and the Lot is improved.

(d) For the transfer of a Lot occurring during the calendar year 2010, the Owner obtaining title to a Lot shall pay a Community Foundation Fee of either:

(i) $4,000 if the title to the Lot is being obtained by the initial Owner from the Declarant or a Declarant-Related Entity and the Lot is unimproved; or

(ii) $2,000 if the title to the Lot is being obtained by the initial Owner from the Declarant or a Declarant-Related Entity and the Lot is improved; or

(iii) Two percent (2%) of the purchase price of the Lot if the Lot is being obtained by a subsequent Owner and the Lot is unimproved; or

(iv) One-half of one percent (.005) of the purchase price of the Lot if the Lot is being obtained by a subsequent Owner and the Lot is improved.

(e) For the transfer of a Lot occurring after December 31, 2010, the Owner obtaining title to a Lot shall pay a Community Foundation Fee of either:

(i) Two percent (2%) of the purchase price of the Lot if the Lot is unimproved, regardless of whether the Owner obtaining title to the Lot is the initial Owner or a subsequent Owner; or

(ii) One-half of one percent (.005) of the purchase price of the Lot if the Lot is improved, regardless of whether the Owner obtaining title to the Lot is the initial Owner or a subsequent Owner.

Such funds may be used by the Le Jardin Cultural Foundation, Inc. in its sole discretion. In the event of non-payment of such Community Foundation Fee, the amount due shall bear interest and shall be collectible by the Association on behalf of the Le Jardin Cultural Foundation, Inc. as a Specific Assessment as set forth in Section 8.6. The Le Jardin Cultural Foundation, Inc. may require the purchasing and/or selling Owner to provide reasonable written proof of the applicable sale price, such as executed closing statements, contracts of sale, copies of deed, or other such evidence as deemed reasonable in the Le Jardin Cultural Foundation, Inc.'s discretion. Declarant and the Association hereby grant Le Jardin Cultural Foundation, Inc. a power-of-attorney, coupled with an interest, so as to provide Le Jardin Cultural Foundation, Inc. with the right, at no expense to Declarant or the Association, to collect the Community Foundation Fee and to enforce the provisions of this Section 8.12 against the Owner of a Lot, including, but not limited to, the right to seek collection of the Community Foundation Fee and other sums payable pursuant to this Section 8.12. In addition, Le Jardin Cultural Foundation, Inc. may collect its reasonable attorneys' fees and court costs in enforcing the provisions of this Section 8.12. For the purposes of this Section, a Lot shall be "unimproved" until such time as a Lot contains a completed home with a certificate of occupancy, and at such time a certificate of occupancy is issued, the Lot shall be "improved".

The amount of the Community Foundation Fee to be collected at each closing of a Lot and paid to the Le Jardin Cultural Foundation, Inc. may be increased, but not decreased, with the written approval of Owners of a Majority of the total number of Lots. Such increased amount may differ for an improved Lot and an unimproved Lot.

Notwithstanding the foregoing, the Community Foundation Fee shall not be due and payable for the following transactions (the "Excepted Transactions"):

(a) the transfer of any Lot, or portion thereof, to Declarant or any Declarant-Related Entity;

(b) the initial purchase of the twelve (12) Lots identified by Declarant as being "Founders' Society" Lots as determined by Declarant;

(c) the transfer of a Lot, or portion thereof, to the spouse of an Owner or to a direct lineal descendant of the Owner;

(d) the transfer of a Lot, or portion thereof, to a trust whose beneficiaries are solely the spouse and/or direct lineal descendants of the Owner;

(e) the transfer of a Lot, or portion thereof, to an entity in which the Owner owns, directly or indirectly, not less than 50.1% of the ownership interests in such entity;

(f) the transfer of a Lot, or portion thereof, to an entity that owns, directly or indirectly, not less than 50.1% of the ownership interests in Owner;

(g) a Mortgagee acquiring title to a Lot, or portion thereof, pursuant to a foreclosure action or a conveyance in lieu of foreclosure; or

(h) any transfer for which the Declarant, in its sole discretion, waives in writing the transfer fee

Except for the Excepted Transactions permitted under subparagraph (a) above (for which no notice shall be required), the transferring Owner shall give the Le Jardin Cultural Foundation, Inc. at least thirty (30) days prior written notice of any transfer which is an Excepted Transaction with sufficient documentation to establish that the transfer is an Excepted Transaction.

If the transfer of a Lot, or portion thereof, is deemed in that particular instance to be an Excepted Transaction, the subsequent transfer of that Lot, or portion thereof, shall again be subject to the Community Foundation Fee unless such subsequent transfer independently qualifies as a separate Excepted Transaction in accordance with this Section.

This Section shall inure to the benefit of Le Jardin Cultural Foundation, Inc. and its successors and assigns. After the expiration of the Development Period, this Section 8.12 shall not be amended by the Association or its Members without the approval of one hundred percent (100%) of all Members of the Association (except for the increase in the amount of the Community Foundation Fee which may be amended as set forth above in this Section).

8.13 Master Association. Each Owner acknowledges that the assessments and other charges provided for herein are in addition to, and not in lieu of, the assessments and other charges provided for in the Master Documents. To the extent required pursuant to the Master Documents, the Association shall include all assessments and charges levied against the Properties within Giverny at Le Jardin by the Master Association in its annual budgets and shall be responsible for collecting such amounts on behalf of the Master Association. The Association shall disburse the full amount of such charges to the Master Association in accordance with the Master Documents

8.14 Contributions by Declarant. In accordance with Section 8.2, the Declarant may support the Association by funding operating deficits during the Development Period. Such funding shall be treated as a loan unless otherwise designated by the Declarant. Unless otherwise determined by Declarant in its sole discretion, Declarant shall be repaid for such loan from the operating account of the Association, or from the working capital contributions collected at the sale of Lots, but not from capital reserves. Regardless of whether the Declarant recoups any other deficit amounts, it is not the intention of the Declarant to forfeit refundable reserves or deposits paid by Declarant, nor to pay for deficits created by the nonpayment of assessments by other Owners. It is also not the intention of Declarant to pay for expenses which are otherwise covered in the annual budget of the Association, but which, due to the requirement of an advance payment, create temporary or seasonal deficits. Accordingly, Declarant shall be reimbursed for all amounts paid by Declarant in the funding of deficits caused by the nonpayment of assessments by Owners which, if not sooner paid, shall be paid to Declarant at the time the unpaid assessment is collected. In addition, if not sooner paid, Declarant shall be reimbursed for any refundable deposit upon the Association's receipt of the same.

All deficits shall be collectible by Declarant at any time from the working capital contributions or from excess funds not designated for capital reserves. The Declarant shall have the right to pursue the collection of any unpaid assessments on behalf of the Association, as well as the right to act on behalf of the Association (if necessary) in obtaining refunds of all deposits paid for by Declarant. The Board of

Directors, specifically including members of the Board appointed by the Declarant, shall be authorized to execute a promissory note or notes on behalf of the Association to evidence the repayment obligation of the Association; provided however, the failure to execute such a note shall in no way diminish such obligation.

## ARTICLE 9: ARCHITECTURAL STANDARDS

9.1 General. No exterior structure or improvement, as described in Section 9.5, shall be placed, erected, installed or made upon any Lot or any other portion of the Properties except in compliance with this Article, and with the prior written approval of the ARB under Section 9.2, unless exempted from the application and approval requirements pursuant to Section 9.3.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer, unless otherwise approved by the ARB in its sole discretion.

This Article shall not apply to the activities of the Declarant nor to improvements to the Common Area by or on behalf of the Association. This Article may not be amended during the Development Period without the Declarant's written consent.

9.2 Architectural Review. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties acknowledges that, as the developer of the Properties, Declarant has a substantial interest in ensuring that all structures and improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell or lease any portion of the Properties or the Additional Property. Therefore, the Declarant may, on its behalf, establish an ARB to be responsible for administration of the Design Guidelines and review of all applications for construction and modifications under this Article. The ARB shall consist of one (1) or more Persons who may, but are not required to, be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ARB. The ARB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. In addition, the ARB may require deposits while construction is pending on any Lot to ensure completion without damage to the Properties.

The ARB shall have exclusive jurisdiction over all construction on any portion of the Properties. Until one hundred percent (100%) of the Properties have been developed and conveyed to Owners other than the Declarant and initial construction on each Lot has been completed in accordance with the Design Guidelines, the Declarant retains the right to appoint all members of the ARB who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

9.3 Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare the initial Design Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one (1) portion of the Properties to another depending upon the location, unique characteristics, and intended use. For example, by way of

illustration but not limitation, the Design Guidelines may impose stricter requirements on those portions of the Properties adjacent to or visible from any Lake. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the reviewing bodies in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the reviewing bodies and compliance with the Design Guidelines does not guarantee approval of any application.

The ARB shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only. No provision of the Design Guidelines may be deleted or modified in any way which lessens the restrictiveness of the Design Guidelines without the unanimous written consent of the board of directors of the Master Association. No amendment shall require the modification or removal of any structure previously approved once the approved construction or modification has commenced.

The ARB shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Properties.

(b) Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARB for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, grading, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the reviewing bodies may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations.

Each application to the ARB shall be deemed to contain a representation and warranty by the Owner that use of the plans submitted does not violate any copyright associated with the plans. Neither the submission of the plans to the ARB, nor the distribution and review of the plans by the ARB shall be construed as publication in violation of the designer's copyright, if any. Each Owner submitting plans to the ARB shall hold the members of the ARB, the Association and the Declarant harmless and shall indemnify said parties against any and all damages, liabilities, and expenses incurred in connection with the review process of this Declaration.

In reviewing and acting upon any request for approval, the ARB shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time. The ARB shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and whether proposed improvements are consistent with Design Guidelines.

In the event that the ARB fails to approve or to disapprove any application within thirty (30) Days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARB pursuant to Section 9.8.

Notwithstanding the above, the ARB by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. Any Owner may remodel, paint or redecorate the interior of structures on his or her Lot without approval. However, modifications to the interior of screened porches, patios, windows, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in

accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

(c) Delinquent Assessments and Other Charges. Notwithstanding the provisions of subsection (b) above, any application for the approval of plans and specifications as set forth in this Article shall be deemed to be disapproved unless and until any and all delinquent assessments and other charges permitted by this Declaration have been paid current by the Owner submitting such plans and specifications for approval.

Subsequent to the approval of plans and specifications pursuant to this Article, if the Owner shall become delinquent in the payment of assessments or other charges permitted by this Declaration at any time during the prosecution of the approved work, the Owner shall be deemed to be in violation of such approval and shall be subject to any means of enforcement set forth in Section 9.10 and Section 4.3.

9.4 Architect, Builder and General Contractor Approval. In order to ensure that appropriate standards of construction are maintained throughout the Properties, all architects, builders and general contractors must be approved by the ARB prior to engaging in any construction activities within the Properties. The ARB may implement an approval process utilizing established criteria and requiring the submission of a written application for approval. Approval of any plans may be withheld until such time as the Owner's architect, builder or contractor has been approved by the ARB. Approval of an architect, builder or general contractor may be conditioned upon an agreement with the ARB to maintain certain insurance coverages required by the ARB, pay construction deposits to ensure completion of a project without damage to the Properties, and pay fees determined by the ARB, from time to time. Both the criteria and the application form are subject to change in the sole discretion of the ARB. Approval of architects, builders and contractors may not be construed as a recommendation of a specific architect, builder or contractor by the ARB or the Declarant, nor a guarantee or endorsement of the work of such architect, builder or contractor. The criteria and requirements established by the ARB for approval of architects, builders and contractors are solely for the Declarant's protection and benefit and are not intended to provide the Owner with any form of guarantee with respect to any approved architect, builder, or contractor. Owner's selection of an architect, builder, or contractor shall be conclusive evidence that the Owner is independently satisfied with any and all concerns Owner may have about the qualifications of such architect, builder or contractor. Furthermore, Owner waives any and all claims and rights that Owner has or may have now or in the future, against the ARB or the Declarant.

9.5 Specific Guidelines and Restrictions.

(a) Exterior Structures and Improvements. Exterior structures and improvements shall include, but shall not be limited to, staking, clearing, excavation, grading and other site work; initial construction of any dwelling or accessory building; exterior alteration of existing improvements; installation or replacement of hardscape, such as driveways, walkways, or parking areas; any structure in any Lake (if allowed by the ARB) such as docks, piers, gazebos and other floating structures; mailboxes; basketball hoops; swing sets and similar sports and play equipment; clotheslines; garbage cans; wood piles; swimming pools; gazebos or playhouses; hot tubs; wells; solar panels; hedges, walls, dog runs, animal pens, or fences of any kind, including invisible fences; artificial vegetation or sculpture; and planting or removal of landscaping materials.

(b) In addition to the foregoing activities requiring prior approval, the following items are strictly regulated, and the reviewing body shall have the right, in its sole discretion, to prohibit or restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless approval or waiver in writing is obtained from the ARB. The ARB may, but is not required to, adopt additional specific guidelines as part of the Design Guidelines.

(i) Signs. No sign of any kind shall be erected by an Owner or occupant without the prior written consent of the ARB, except (1) such signs as may be required by legal proceedings; (2) not more than one (1) professional security sign of such size and location deemed reasonable by the ARB in its sole discretion; and (3) such additional signs as may be permitted in the Design Guidelines; provided however, all signs shall be posted and erected in accordance with any requirements set forth in the Design Guidelines. Unless in compliance with this Section, no other signs shall be posted or erected by any Owner or occupant within any portion of the Properties, including the Common Area, any structure or dwelling located on the Common Area or any Lot (if such sign would be visible from the exterior of such structure or dwelling as determined in the reviewing body's sole discretion).

The Declarant and the ARB reserve the right to prohibit signs and to restrict the size, content, color, lettering, design and placement of any approved signs. All permitted signs must be professionally prepared. This provision shall not apply to entry, directional, or other signs installed by the Declarant or its duly authorized agent as may be necessary or convenient for the marketing and development of the Properties.

(ii) Tree Removal. In addition to, and not in lieu of, any governmental law, rule, regulation or ordinance regulating the removal of trees, no trees that are more than four (4) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the ARB; provided however, any trees, regardless of their diameter, that are located within ten (10) feet of a drainage area, a sidewalk, a residence, or a driveway, or any diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons may be removed without the written consent of the ARB. The ARB may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any tree removed.

(iii) Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Lot; (2) one (1) approved decorative post light; (3) pathway lighting; (4) street lights in conformity with an established street lighting program for the Properties; (5) seasonal decorative lights during the usual and common season; or (6) any additional lighting as may be approved by the ARB. All lights shall be installed or aimed so that they do not present a disabling glare to drivers or pedestrians or create a nuisance by projecting or reflecting objectionable light onto a neighboring property.

(iv) Temporary or Detached Structures. Except as may be permitted by the ARB during initial construction, no temporary house, dwelling, garage or outbuilding shall be placed or erected on any Lot. Except as provided in Section 10.7(b), no mobile home, trailer home, travel trailer, camper or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Lot as a temporary or permanent dwelling.

(v) Accessory Structures. With the approval of the ARB, detached accessory structures may be placed on a Lot to be used for a playhouse, recreational and playground equipment, tennis court, basketball court, swimming pool, pool house, guest house, tool shed, dog house, garage or other approved use. A garage may also be an attached accessory structure. Such accessory structures shall conform in exterior design and quality to the dwelling on the Lot. With the exception of a garage that is attached to a dwelling and except as may be provided otherwise by the ARB, an accessory structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot or in a location approved by the ARB. All accessory structures shall be located within side and rear setback lines as may be required by the ARB or by applicable zoning law.

(vi) Antennas and Satellite Dishes. No transmission antenna, except for customer-end antennas that receive and transmit fixed wireless signals, may be erected anywhere on the Properties

without written approval of the ARB. No direct broadcast satellite ("DBS") antenna or multi-channel multi-point distribution service ("MMDS") larger than one meter (39.37") in diameter shall be placed, allowed, or maintained upon any portion of the Properties, including but limited to any Lot. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may be installed only in accordance with Federal Communication Commission ("FCC") rules and any requirements of the ARB and the Association that are consistent with the rules of the FCC, as they may be amended from time to time. Such items shall be installed in the least conspicuous location available on the Lot which permits reception of an acceptable signal. Except as otherwise provided by this subsection, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Properties, whether attached to a structure or otherwise; provided, however, that the Association shall have the right to erect, construct and maintain such devices.

(vii) Utility Lines. Overhead utility lines, including lines for cable television, are not permitted except for temporary lines as required during construction and lines installed by or at the request of Declarant.

(viii) Standard Mailboxes. All dwellings within the Properties shall have standard mailboxes conforming to postal regulations and the guidelines for such mailboxes adopted by the ARB. The ARB may adopt different standard mailboxes for a specific Neighborhood. Application shall be made to the ARB prior to installation or replacement of a mailbox. By accepting a deed to a Lot, each Owner agrees that the ARB may remove any nonapproved mailbox in a reasonable manner; all costs for same shall be paid by Owner of such Lot, and all claims for damages caused by the ARB are waived.

(ix) Docks and Other Floating Structures. No dock, piers, floating gazebos or other floating structures may be constructed as an appurtenance to any Lot unless approved by the ARB, which approval is in the sole discretion of the ARB. Such floating structures may be prohibited altogether by the ARB.

(x) Low Pressure Sewer System. Certain Lots designated by Declarant may require the use of a low pressure force main sanitary sewer system providing sewer service to such Lots which connect to the public sewer system. No low pressure force main sanitary sewer system may be installed on any Lot without the prior approval of the ARB. All low pressure force main sanitary sewer system and other equipment and used in connection therewith must satisfy all applicable governmental regulations and ARB requirements including, but not limited to, standards for manufacturer and model, power, and location on the Lot. The ARB reserves the right to prohibit the use of any equipment and/or vendor that does not meet the minimum requirements it may establish from time to time. Each Owner of a Lot which uses a low pressure force main sanitary sewer system shall be responsible for the maintenance, repair and replacement of such low pressure force main sanitary sewer system and related equipment and pump lines (including, without limitation, pump lines which lie outside of the Lot).

9.6 Construction Period. Upon acquisition of record title to a Lot by the first Owner thereof other than the Declarant, the Owner and successive Owners may be required to commence construction within a specified period of time as set forth in the vesting deed. After commencement of construction, each Owner shall diligently continue construction to complete such construction in a timely manner. The initial construction of all structures must be completed within eighteen (18) months after commencement of construction, unless extended by the ARB in its sole discretion. All other construction shall be completed within the time limits established by the ARB at the time the project is approved by the reviewing body.

For the purposes of this Section, commencement of construction shall mean that (a) all plans for such construction have been approved by the ARB; (b) a building permit has been issued for the Lot by the appropriate jurisdiction; and (c) construction of a structure has physically commenced beyond site preparation. Completion of a structure shall mean that a certificate of occupancy has been issued for a dwelling on the Lot by the appropriate jurisdiction.

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

9.8 Variance. The ARB may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with rules and regulations adopted by the ARB. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the ARB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.9 Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Declarant, the Association, the Board nor the ARB shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Neither the Declarant, the Association, the Board, the ARB, or any committee, or member 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 Lot. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.6.

9.10 Enforcement. The Declarant, any member of the ARB, or the Board, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this Article. Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written notice from the ARB, Owners shall, at their own cost and expense, cure any violation or nonconformance or remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to cure or remove and restore the property as required, any authorized agent of Declarant, the ARB, or the Board shall have the right to enter the property, cure or remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the Declarant and the ARB by any means of enforcement described in Section 4.3. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Lot and collected as a Specific Assessment pursuant to Section 8.6.

Unless otherwise specified in writing by the reviewing body granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. If, after commencement, any Person fails to diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the By-Laws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment pursuant to Section 8.6.

Neither the ARB or any member of the foregoing nor the Association, the Declarant, or their members, officers or directors shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the ARB from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARB.

## ARTICLE 10: USE RESTRICTIONS

10.1 General. This Article sets out certain use restrictions which must be complied with by all Owners and occupants of any Lot. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, sales offices for Declarant or Declarant-Related Entity, an information center and/or a sales office for any real estate broker retained by the Declarant or Declarant-Related Entity to assist in the sale of property described on Exhibits "A" or "B," offices for any property manager retained by the Association, business offices for the Declarant or the Association and related parking facilities) consistent with this Declaration and any Supplemental Declaration. Each owner acknowledges that the use restrictions set forth herein are in addition to, and not in lieu of, the use restrictions provided for in the Master Documents, if any.

10.2 Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties, including without limitation, the Lake Use Restrictions. Such rules shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by Members holding a Majority of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant.

10.3 Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned.

10.4 Leasing. Lots may be leased for residential purposes only. All leases shall be in writing and for a term of at least one (1) year. No lease shall be for less than the entire lot. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Governing Documents. The lease shall also obligate the tenant to comply with the foregoing. The Board may require notice of any lease together with such additional information deemed necessary by the Board. The term "lease" shall include all leases, rental agreements and other agreements for occupancy, whether or not consideration is paid therefor in the form of money.

10.5 Residential Use. Lots may be used only for residential purposes of a single family and for ancillary business or home office uses. A business or home office use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (b) the activity conforms to all zoning requirements for the Properties; (c) the activity does not involve regular visitation of the Lot by clients, customers, employees, suppliers, or other invitees or door-to-door solicitation of residents of the Properties; (d) the activity does not increase traffic or include frequent deliveries within the Properties; and (e) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

No other business, trade, or similar activity shall be conducted upon a Lot without the prior written consent of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Lot shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or Declarant-Related Entity with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties, including the operation of a timeshare or similar program.

No garage sale, moving sale, rummage sale, auction or similar activity shall be conducted upon a Lot without the prior written consent of the Board and compliance with any rules adopted by the Board.

10.6 Occupancy of Unfinished Dwellings. No dwelling erected upon any Lot shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the dwelling being fully completed.

10.7 Vehicles.

(a) Automobiles and non-commercial trucks and vans shall be parked only in the garages or in the driveways, if any, serving the Lots unless otherwise approved by the ARB; provided however, the Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Properties. No motorized vehicles shall be permitted on pathways, sidewalks, or unpaved Common Area except for public safety vehicles authorized by the Board.

(b) Recreational vehicles shall be parked only in the garages, if any, serving the Lots or, with the prior written approval of the ARB, other hard-surfaced areas which are not visible from the street or any Lake; provided however, guests of an Owner or occupant may park recreational vehicles (not to exceed one recreational vehicle at a time) on the driveway serving such Owner's or occupant's Lot for a period not to exceed seven (7) Days each calendar year. "Visibility" shall be determined by the ARB in its sole discretion. The term "recreational vehicles," as used herein, shall include, without limitation, motor homes, mobile homes, boats, "jet skis" or other watercraft, trailers, other towed vehicles, motorcycles, minibikes, scooters, go-carts, golf carts, campers, buses, commercial trucks and commercial vans. Any recreational vehicles parked or stored in violation of this provision in excess of seven (7) Days each

calendar year shall be considered a nuisance and may be removed from the Properties. The Declarant and/or the Association may designate certain parking areas within the Properties for recreational vehicles subject to reasonable rules and fees, if any.

(c) Service and delivery vehicles may be parked in the Properties during daylight hours for such periods of time as are reasonably necessary to provide service or to make a delivery within the Properties.

(d) All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with the Governing Documents.

10.8 Private Streets. The Private Streets shall be subject to the provisions of this Declaration regarding use of Common Area. Additionally, Owners of Lots and other permitted users of the Private Streets pursuant to Section 2.2 shall be obligated to refrain from any actions which would deter from or interfere with the use and enjoyment of the Private Streets by other authorized users of the Private Streets. Prohibited activities shall include without limitation obstruction of any of the Private Streets.

10.9 Use of Common Area. There shall be no obstruction of the Common Area, nor shall anything be kept, parked or stored on any part of the Common Area without the prior written consent of the Association. With the prior written approval of the Board of Directors, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Area for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Area as provided herein shall assume, on behalf of himself/herself/themselves and his/her/their guests, occupants and family, all risks associated with the use of the Common Area 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.

10.10 Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. Pets may not be tied outside without constant supervision. "Usual and common household pets" include birds and fish, but do not include wild, exotic or bizarre animals such as, but not limited to, pigs, snakes, reptiles, rodents or animals of similar import. No animals shall be kept, bred or maintained for commercial purposes without prior written Board approval. All permitted pets shall be reasonably controlled by the owner whenever outside a dwelling and shall be kept in such a manner as to not become a nuisance by barking or other acts. All Owners or occupants must strictly comply with all applicable laws and ordinances concerning pets. Noncompliance may result in the pick up of animals by the appropriate governmental authorities. The owners of the pet shall be responsible for all of the pet's actions. Pets shall not be permitted in any Lake. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, such animal shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 4.3. This provision shall not be construed to interfere with any provision under the Americans with Disabilities Act or any similar applicable federal, state or local law, ordinance or regulation. Service animals shall be permitted on the Properties.

10.11 Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the

eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might, in the sole discretion of the Board, disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious or offensive activity shall be conducted within the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARB, shall be located, installed or maintained upon the exterior of any Lot unless required by law. Any siren or device for security purposes shall contain a device or system which causes it to shut off automatically.

The reasonable and normal development, construction and sales activities conducted or permitted by the Declarant shall not be considered a nuisance or a disturbance of the quiet enjoyment of any Owner or occupant.

10.12 Storage of Materials, Garbage, and Dumping. All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash or garbage; petroleum products, fertilizers, or other potentially hazardous or toxic substances in any pond, Lake, drainage ditch or stream within the Properties or on any Common Area, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff.

Each Owner shall maintain its Lot in a neat and orderly condition throughout initial construction of a residential dwelling and not allow trash or debris from its activities to be carried by the wind or otherwise scattered within the Properties. Storage of construction materials on the Lot shall be subject to such conditions, rules, and regulations as may be set forth in the Design Guidelines. Each Owner shall keep roadways, easements, swales, and other portions of the Properties clear of silt, construction materials and trash from its activities at all times. Trash and debris during initial construction of a residential dwelling shall be contained in standard size dumpsters or other appropriate receptacles and removed regularly from Lots and shall not be buried or covered on the Lot. Any Lot on which construction is in progress may be policed prior to each weekend, and during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed. In addition, Owners shall remove trash and debris from the Lot upon reasonable notice by Declarant in preparation for special events.

10.13 Combustible Liquid. There shall be no storage of gasoline, kerosene, propane, heating or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Lot for emergency purposes and operation of lawn mowers, grills, and similar tools or equipment and except as may be approved in writing by the ARB. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

10.14 Guns. The discharge of firearms on the Properties is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types. The Board may impose fines and exercise other enforcement remedies as set forth in this Declaration, but shall have no obligation to exercise self-help to prevent or stop any such discharge.

10.15 Subdivision or Combination of Lot(s). No Lot shall be subdivided or its boundary lines changed (including the combination of two (2) or more Lots into one Lot) after a

subdivision plat including such Lot has been approved and filed in the Public Records without the Declarant's prior written consent during the Development Period, and the prior written consent of the ARB thereafter. In addition, no home shall be subdivided or partitioned to create housing for more than a single family. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots which it owns. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any. All costs associated with the combination of Lots into one Lot shall be at the expense of the Owner of such Lots.

10.16 Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped, improved and maintained so as to permit safe sight across such areas. No fence, wall, hedge or shrub shall be placed or permitted to remain where it would cause a traffic or sight problem.

10.17 Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No improvements, obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner shall be responsible for maintaining all drainage areas located on its Lot. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas.

(c) Each Owner shall be responsible for controlling the natural and man-made water flow from its Lot. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Properties with excessive water flow from its Lot. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from Lots. Neither the Association nor the Declarant bears any responsibility for remedial actions to any Lot.

(d) Use of any areas designated as "drainage easement areas" on any recorded subdivision plat of the Properties, shall be subject to strict prohibitions against encroachment of structures into, over or across the drainage easement areas, and the right of the Declarant to enter upon and maintain the drainage easement areas. Such maintenance activities may include disturbance of landscaping pursuant to the terms contained in any declaration of easements, notwithstanding approval of the landscaping as set forth in Article 9.

(e) No Person shall alter the grading of any Lot without prior approval pursuant to Article 9 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

(f) All Persons shall comply with any and all applicable erosion control ordinances and regulations in construction of improvements on any Lot and in conducting any activity within non-disturbance buffer zones.

(g) All Persons shall comply with any and all applicable state or county ground disturbance laws, including, but not limited to Chapter 9 of Title 25 of the Official Code of Georgia Annotated specifically O.C.G.A. §25-9-6 also referred to as the Call-Before-You-Dig law.

10.18 Irrigation. Owners shall not install irrigation systems which draw upon ground or surface waters nor from any Lake, pond, or other body of water within the Properties. However, the Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Area of Common Responsibility.

10.19 Streams. No streams which run across any Lot may be dammed, or the water therefrom impounded, diverted, or used for any purpose without the prior written consent of the Board, except that the Declarant shall have such rights as provided in Article 11.

10.20 Lake. Any Lake shall be used only in accordance with the Lake Use Restrictions promulgated by the Declarant and the Association. Swimming, fishing, boating or other active uses of any Lake shall be strictly governed by the Lake Use Restrictions and may be prohibited altogether in the discretion of the Declarant or the Association. Boats, if allowed, will be subject to limitations set forth in the Lake Use Restrictions, including, without limitation, limitations on size and motors. Fishing, if allowed, is permitted with such licenses as may be required by any governmental entity. Except as designated by the Declarant, no trails or pathways shall be established along the perimeter of any Lake. No docks, piers or gazebos shall be constructed, attached or floated upon or adjacent to any Lake without the specific approval of the ARB. Notwithstanding the foregoing, the Association shall have the right to use the equipment it deems necessary at the times and places it deems necessary to comply with its maintenance responsibilities. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of any Lake.

10.21 Preservation of the Lake. Each Owner acknowledges that any Lake significantly benefits all Owners. It is the intent of this provision to provide for the preservation of any Lake in its clean and pristine condition and for continued use of any Lake for recreational purposes. To this end, no Owner shall take any action, including but not limited to, polluting any Lake, adding chemicals or detergent to any Lake, placing debris in any Lake, or taking or failing to take any action which would detrimentally affect the condition of any Lake or the ability of other Owners to continue to use any Lake for recreational purposes. Each Owner covenants to and agrees with the other Owners that he or she will take no action to increase the amount of siltation entering any Lake or to reduce or raise the level of any Lake and will take all necessary actions to preserve any Lake in its pristine condition, to preserve continued use of any Lake for recreational purposes, and to preserve any Lake at its present level. In addition, Owners shall refrain from any actions which would erode or damage the shoreline of any Lake.

10.22 Lakefront Lots. Unless an exception is authorized in writing by the ARB, all use restrictions, rules and regulations, and Design Guidelines applicable to the front yards of Lots shall also be applicable to the back yards of Lots which are bounded by any Lake. No building, fence, wall, garage, carport, outbuilding, or other structure of any nature shall be commenced, erected, placed, or maintained within one hundred (100) feet of the elevation level for any Lake without the written consent of the ARB.

10.23 Shoreline of Lakes. Owners, as well as their families, tenants, guests, invitees, and pets, shall be obligated to refrain from any actions which would erode or damage the shoreline of any Lake.

10.24 Wetlands. All areas designated on a recorded plat as "wetlands" shall be generally left in a natural state, and any proposed alteration of the wetlands must be in accordance with any restrictions or covenants recorded against such property and be approved by all appropriate regulatory bodies. Prior to any alteration of a Lot, the Owner shall determine if any portion thereof meets the requirements for designation as a regulatory wetland. Notwithstanding anything contained in this Section, the Declarant, the Association, and the successors, assigns, affiliates and designees of each may

conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

## ARTICLE 11: EASEMENTS

In addition to those easements reserved, created, established, promulgated and declared pursuant to the Master Documents, Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, the Association, the Members, the Owners, and their successors-in-title.

11.1 Easements of Encroachment. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Lots and between each Lot and any adjacent Common Area due to the 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 willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2 Easements for Utilities, Etc.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself during the Development Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure, existing or proposed) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable, digital or similar television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; Lakes, ponds, wetlands, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity systems, lines and meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

Declarant may assign to the local water supplier, sewer service provider, electric company, telephone company, natural gas supplier, internet service provider, cable television/satellite service provider or any utility sub-metering company, the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period and its designees non-exclusive, perpetual, reciprocal, appurtenant easements, and 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 on Exhibits "A" or "B."

(c) Any damage to a Lot resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. Nothing contained herein shall obligate the Declarant, the Association or the Board to pursue legal recourse against any Person damaging a Lot or any portion thereof as a result of the exercise of this

easement. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot, and except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

(e) Declarant reserves, creates, establishes, promulgates and declares for itself and for the benefit of Owners of Lots which require the use of a low pressure force main sanitary sewer system, a non-exclusive, perpetual, reciprocal, appurtenant easement, upon, across, over, and under all of the Properties (but not through a structure, existing or proposed) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing sewer lines used in connection with a low pressure force main sanitary sewer system which serves such Lots.

11.3 Easements for Slope Control and Drainage. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements, for itself and the Association, and their respective representatives, successors and assigns, contractors and agents, over, across, under, through and upon each Lot for the purposes of:

(a) controlling soil erosion, including grading and planting with vegetation any areas of any Lot which are or may be subject to soil erosion;

(b) drainage of natural or man-made water flow and water areas from any portion of the Properties;

(c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Lot or Common Area; and

(d) installing such pipes, lines, conduits or other equipment as may be necessary for slope control and drainage of any portion of the Properties.

11.4 Easements to Serve Additional Property. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation, successors-in-title, agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not 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 Area for construction of roads, for the posting of signs, and for connecting and installing utilities serving the 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 vehicular traffic connected with development of the Additional Property.

11.5 Easement for Entry Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for the Association to enter upon any Lot for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association's officers, committee members, agents, employees and managers of the Association, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to the Owner. This easement includes the right to enter any Lot to cure any

condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

11.6 Easements for Maintenance and Enforcement.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for the Association to enter all portions of the Properties, including each Lot but excluding the interior of any residential dwelling, to (i) perform its maintenance responsibilities under Section 5.1, and (ii) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

(b) The Association may also enter a Lot, excluding the interior of any residential dwelling, to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys fees, may be assessed against the violator as a Specific Assessment.

(c) Entry under this Section shall not constitute a trespass, and prior notice to the Owner shall not be required except as provided in Section 5.2.

11.7 Easements for Lake and Pond Maintenance and Flood Water. Declarant reserves, creates, establishes, promulgates and declares for itself and its successors, assigns, and designees and the Association the nonexclusive, perpetual, appurtenant right and easement, but not the obligation, to enter upon the Lakes, ponds, streams, and wetlands located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps and irrigation systems in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) draw water from such sources for purposes or irrigation; (c) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (d) remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any Lake, pond, stream, or wetland to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves, creates, establishes, promulgates and declares for itself and its successors, assigns and designees, and the Association the non-exclusive, perpetual, appurtenant right and easement of access and encroachment over the Common Area and Lots (but not the dwellings thereon) adjacent to or within thirty (30) feet of Lake beds, ponds, streams and wetlands in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the Lakes, ponds, streams, and wetlands within the Area of Common Responsibility; (c) maintain and landscape the slopes and banks pertaining to such Lakes, ponds, streams, and wetlands; (d) disturb existing landscaping; and (e) pile dirt and plant materials upon such areas. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. All affected areas shall be restored to a neat and attractive condition to the extent practical, as soon as reasonably possible after completion of any construction or maintenance activities authorized in this Declaration. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (a) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (b) to define the limits of any such easements.

11.8 Lateral Support. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over 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, 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.

11.9 Easement for Special Events. Declarant reserves, creates, establishes, promulgates and declares for itself, its successors, assigns and designees a perpetual, non-exclusive appurtenant easement over the Common Area for the purpose of conducting or allowing its designees to conduct educational, cultural, entertainment, promotional or sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

11.10 Rights to Stormwater Runoff, Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such right shall include an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent.

11.11 Easement for Greenbelt Maintenance.

(a) Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon greenbelts, buffer zones and nondisturbance areas located within the Area of Common Responsibility to remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be automatically transferred to the Association at the expiration of the Development Period or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of greenbelt, buffer zone or nondisturbance area to the extent reasonably necessary to exercise their rights under this Section.

(b) Encroachment of structures into, over, or across greenbelts, buffer zones and nondisturbance areas shown on any recorded subdivision plat of the Properties is strictly prohibited. Landscaping in these areas is subject to removal in the reasonable discretion of Declarant in the ordinary course of maintenance of these areas. Any landscaping permitted shall be installed in conformance with Article 9 herein. All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements.

(c) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.12 Easement for Lake Access. Declarant hereby grants to the Owners a perpetual, non-exclusive easement over and across areas of the Common Area adjacent to any Lake designated by recorded subdivision plat for the purpose of ingress and egress to any Lake. Such easement is limited solely to access at the locations designated and constructed by Declarant and/or the Association and shall not include the right for any individual Owner to construct any structure, walkway or path within the Common Area to facilitate Lake access.

11.13 Easement for Retaining Wall and Footing. Declarant reserves, creates, establishes, promulgates and declares a non-exclusive, perpetual, appurtenant easement, for itself and the Association, and their respective representatives, successors and assigns, contractors and agents, over, across, under, through and upon the rear yards of any Lots (the "Adjoining Lots") adjacent to any retaining wall located in the Common Area bordering the Adjoining Lots and the footing for the retaining wall located beneath the surface of the rear yards of the Adjoining Lots. The purpose of this easement is for the placement of any retaining wall on the Common Area adjacent to the aforementioned Lots, for the placement and maintenance of any retaining wall footing beneath the rear yards of such Adjoining Lots, and for the minor unintentional placement or settling or shifting of any retaining wall into the rear yards of the Adjoining Lots.

11.14 Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, the Association, their successors or assigns arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

## ARTICLE 12: MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1 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 street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) Days, or any other violation of the Declaration or By-Laws relating to such Lot or the Owner or occupant which is not cured within sixty (60) Days;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

12.2 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

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

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

12.5 Construction of Article 12. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

## ARTICLE 13: DECLARANT'S RIGHTS

13.1 Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

13.2 Development and Sales. The Declarant and any Declarant-Related Entity may maintain and carry on the Properties such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Lots, such as sales activities, charitable events, and promotional events, and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area. In the event that any such activity necessitates exclusion of Owners from Common Areas, such activities shall not exceed seven (7) consecutive Days. The Declarant and any Declarant-Related Entity shall have easements over the Properties for access, ingress and conducting such activities.

In addition, the Declarant and any Declarant-Related Entity may establish within the Properties, including, without limitation, the gatekeeper's cottage and any clubhouse, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Lots, including, but not limited to, business offices, signs, sales offices, sales centers and related parking facilities. Declarant and its agents may also use photographs of homes located within the Properties for use in marketing purposes. During the Development Period, Owners may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant and any Declarant-Related Entity shall have easements over the Properties for access, ingress, and egress and use of such facilities.

Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any use fees.

13.3 Improvements to Common Areas. The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

13.4 Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 7.4, may conflict with the Declaration, By-Laws or Articles.

13.5 Right of the Declarant to Disapprove Actions. Until two (2) years following the termination of the Class "B" membership, the Declarant shall have the right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Declarant, would tend to impair rights of the Declarant under the Governing Documents, or interfere with development of, construction on, or marketing of any portion of the Properties, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board or any committee as may be granted to the Declarant in the Governing Documents:

(a) The Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address the Declarant has registered with the secretary of the Association, which notice complies with the By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at such meeting. The Declarant may waive its right to receive notice in the same manner as provided in the By-Laws.

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Declarant, acting through any authorized representative, may exercise its right to disapprove at any time within ten (10) Days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) Days following receipt of written notice of the proposed action. No action, policy or program shall be effective or implemented if the Declarant exercises its right to disapprove. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce

the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

13.6 Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines shall be effective without prior notice to and the written consent of the Declarant, during the Development Period. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

## ARTICLE 14: GENERAL PROVISIONS

14.1 Duration.

(a) Unless terminated as provided in Section 14.1(b), the provisions of this Declaration shall run with, bind the Properties and remain in effect perpetually to the extent permitted by law; provided, however, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land for so long as permitted by Georgia law. To the extent that Georgia law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the above, 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.

(b) Unless otherwise provided by Georgia law, this Declaration may be terminated within the first twenty (20) years after the date of recording by an instrument signed by Owners of at least ninety percent (90%) of the total Lots within the Properties, which instrument is recorded in the Public Records; provided however, regardless of the provisions of Georgia law, this Declaration may not be terminated during the Development Period without the prior written consent of the Declarant. After twenty (20) years from the date of recording, this Declaration may be terminated only by an instrument signed by Owners owning at least fifty-one percent (51%) of the Lots and constituting at least fifty-one percent (51%) of the total number of Owners, and by the Declarant, if the Declarant owns any portion of the Properties, which instrument complies with the requirements of O.C.G.A. § 44-5-60(d) and is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

14.2 Amendment.

(a) By Declarant. Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the U.S. Department of Veterans Affairs, the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing. In addition, during the

Development Period, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner. The failure of an amendment to apply uniformly to all Lots shall not constitute a material adverse effect upon the rights of any Owner.

(b) By the Board. The Board shall be authorized to amend this Declaration without the consent of the Members (i) for the purpose of submitting the Properties to the Georgia Property Owners' Association Act, O.C.G.A. §44-3-220, et seq. (1994) and conforming this Declaration to any mandatory provisions thereof; (ii) to correct scrivener's errors and other mistakes of fact; and (iii) for the purposes of bringing any provision contained herein into compliance with the Fair Housing Amendments Act of 1988, as more fully set forth in Section 14.4; provided that amendments under this provision have no material adverse effect on the rights of the Owners. During the Development Period, any such amendments shall require the written consent of the Declarant.

(c) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

14.3 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

14.4 Fair Housing Amendments Act. The provisions of the Governing Documents shall be subordinate to the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, et seq., (hereinafter referred to as "FHAA"), and shall be applied so as to comply with the FHAA. In the event that there is a conflict between or among the Governing Documents and the FHAA, the FHAA shall prevail. Notwithstanding anything to the contrary contained herein, in the event that any provision of this Declaration conflicts with the FHAA, the Board of Directors, without the consent of the Members or of the Declarant, shall have the unilateral right to amend this Declaration for the purpose of bringing this Declaration into compliance with the FHAA. Furthermore, notwithstanding Section 2.3 hereof, the Board shall have the unilateral right to assign portions of the Common Area as Exclusive Common Area or to reassign Common Area previously assigned as Exclusive Common Area to one (1) or more Lots to one (1) or more Owner(s) or occupant(s) should such action be required in order to make a reasonable accommodation under the FHAA.

14.5 Dispute Resolution. It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures.

Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

14.6 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Members holding eighty percent (80%) of the total Class "A" votes in the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.7 Non-Merger. Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

14.8 Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants and reservations of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

14.9 Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with the Master Documents and any additional covenants, restrictions and declarations. The Association may, but shall not be required to, enforce the Master Documents and any such additional covenants, conditions and provisions; provided, however, in the event of a conflict between or among this Declaration and the Master Documents, the provisions of this Declaration shall prevail. In the event of a conflict between or among this Declaration and any additional covenants or restrictions, and/or the provisions of any articles of incorporation, By-Laws, rules and regulations, policies or practices adopted or carried out pursuant thereto, other than those of the Master Association, this Declaration, the By-Laws, Articles and rules and regulations of the Association shall prevail. The foregoing priorities shall not apply to the lien for assessments created in favor of the Master Association and the Association. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or

provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

14.10 Use of the "Giverny at Le Jardin" Name and Logo. Except for Declarant, any Declarant-Related Entity and the Master Association, no Person shall use the words "Giverny at Le Jardin" or the logo for "Giverny at Le Jardin" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Giverny at Le Jardin" in printed or promotional matter where such terms are used solely to specify that particular property is located within Giverny at Le Jardin, and the Association shall each be entitled to use the words "Giverny at Le Jardin" in its name.

14.11 Compliance. Every Owner and occupant of any Lot shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association, the Declarant, or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

14.12 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to a Lot shall give the Board at least seven (7) Days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. After the transfer of title, the transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

14.13 Exhibits. Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 14.2. Exhibit "C" is attached for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 13 day of April, 2006.

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My Commission Expires:

[NOTARY SEAL]

DEBORAH L. KENNICOTT NOTARY PUBLIC MY COMMISSION EXPIRES GEORGIA MAY 21, 2007 COBB COUNTY

**LE JARDIN, LLC**, a Georgia limited liability company

By: **BOJ HOMES AT TWIN LAKES, LLC**, a Georgia limited liability company, Manager

By: _____ (SEAL)
Brian O. Jordan, Sole Member

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My Commission Expires:

[NOTARY SEAL]

DEBORAH L. KENNICOTT NOTARY PUBLIC MY COMMISSION EXPIRES GEORGIA MAY 21, 2007 COBB COUNTY

By: **TWIN LAKES MACAULEY, LLC**, a Georgia limited liability company, Manager

By: **THE MACAULEY COMPANIES, INC.**, a Georgia corporation, Sole Manager

By: _____
Stephen H. Macauley
President

[CORPORATE SEAL]

## CONSENT OF LENDER

Fairfield Financial Services, Inc., a Georgia corporation ("Lender"), beneficiary under (i) that certain Deed to Secure Debt and Security Agreement dated September 9, 2005, and recorded on October 4, 2005 in the Fulton County Public Records at Deed Book 41023, Page 657 and (ii) that certain Deed to Secure Debt and Security Agreement dated September 9, 2005, and recorded on October 4, 2005 in the Fulton County Public Records at Deed Book 41023, Page 691 (collectively, as amended from time to time, the "Security Deeds"), for itself and its successors and assigns, approves the foregoing Declaration of Covenants, Conditions and Restrictions for Giverny at Le Jardin (the "Declaration"). Lender agrees and acknowledges that, upon recordation of the Declaration, the restrictive covenants contained in the Declaration will run with the land which serves as security for the debt evidenced by the Security Deed and further agrees that any foreclosure or enforcement of any other remedy available to Lender under the Security Deeds will not render void or otherwise impair the validity of the Declaration.

Executed this 3rd day of April, 2006.

Signed, sealed and delivered in the presence of:

Official Witness

Notary Public

My Commission Expires:

[NOTARY SEAL]

CHRISTIE S. FULLER
Notary Public
STATE OF GEORGIA
My Comm. Exp. 2/28/10

FAIRFIELD FINANCIAL SERVICES, INC., a Georgia corporation

By:

Name:

Title: BONNIE A. GLASS, SR. VICE PRESIDENT

FAIRFIELD FINANCIAL SERVICES, INC. SEAL

# EXHIBIT "A"

## Land Initially Submitted

**Legal Description**
**Parcel Phase I - Giverny**

All that tract or parcel of land lying and being in Land Lots 10, 11, 12, 13, 14 and 15, 9th District C, Fulton County, Georgia, being more particularly described as follows:

BEGINNING at a 3/4" iron found at the intersection of the southwesterly right-of-way line of Campbellton-Fairburn Road AKA State Route 92 (100' r/w) and the southeasterly right-of-way line of Ridge Road (60' r/w), THENCE along said southwesterly right-of-way line of Campbellton-Fairburn Road South 57°58'55" East, a distance of 987.75 feet to a point;

THENCE along said southwesterly right-of-way line of Campbellton-Fairburn Road along the arc of a curve to the right a distance of 497.72 feet, said curve having a radius of 6710.00 feet and a chord bearing of South 54°29'26" East, 497.60 feet, to a point;

THENCE along said southwesterly right-of-way line of Campbellton-Fairburn Road South 51°36'39" East, a distance of 698.05 feet to a point;

THENCE along said southwesterly right-of-way line of Campbellton-Fairburn Road along the arc of a curve to the right a distance of 394.22 feet, said curve having a radius of 1419.13 feet and a chord bearing of South 43°10'02" East, 392.95 feet, to a point;

THENCE along said southwesterly right-of-way line of Campbellton-Fairburn Road South 35°16'53" East, a distance of 1200.36 feet to a point;

THENCE along said southwesterly right-of-way line of Campbellton-Fairburn Road along the arc of a curve to the left a distance of 612.69 feet, said curve having a radius of 1338.16 feet and a chord bearing of South 48°42'43" East, 607.36 feet, to a 1/2" rebar found;

THENCE leaving said southwesterly right-of-way line of Campbellton-Fairburn Road South 90°00'00" West, a distance of 628.28 feet to a point;

THENCE North 67°31'38" West, a distance of 1170.98 feet to a point;

THENCE South 13°38'01" West, a distance of 163.41 feet to a point;

THENCE North 81°31'32" West, a distance of 783.70 feet to a point;

THENCE South 10°00'35" West, a distance of 98.18 feet to a point;

THENCE North 85°02'24" West, a distance of 1871.55 feet to a point;

THENCE along the arc of a curve to the left a distance of 131.99 feet, said curve having a radius of 85.58 feet and a chord bearing of North 33°29'14" West, 119.29 feet, to a point;

THENCE North 04°32'18" West, a distance of 22.99 feet to a point;

THENCE along the arc of a curve to the left a distance of 122.02 feet, said curve having a radius of 475.00 feet and a chord bearing of North 11°53'52" West, 121.69 feet, to a point;

THENCE North 19°15'26" West, a distance of 174.20 feet to a point;

THENCE along the arc of a curve to the right a distance of 221.66 feet, said curve having a radius of 425.00 feet and a chord bearing of North 04°18'58" West, 219.15 feet, to a point;

THENCE North 10°37'30" East, a distance of 166.58 feet to a point;

THENCE along the arc of a curve to the left a distance of 97.29 feet, said curve having a radius of 525.00 feet and a chord bearing of North 05°18'59" East, 97.15 feet, to a point;

THENCE North 00°00'27" East, a distance of 202.30 feet to a point;

THENCE along the arc of a curve to the right a distance of 216.73 feet, said curve having a radius of 350.00 feet and a chord bearing of North 17°44'50" East, 213.29 feet, to a point;

THENCE North 70°11'24" West, a distance of 362.27 feet to a point;
THENCE North 00°10'59" West, a distance of 344.87 feet to a 1" crimp top pipe found on the southeasterly right-of-way line of Ridge Road;
THENCE along said southeasterly right-of-way line of Ridge Road North 66°33'47" East, a distance of 596.83 feet to a point;
THENCE along said southeasterly right-of-way line of Ridge Road along the arc of a curve to the right a distance of 1145.19 feet, said curve having a radius of 1106345.75 feet and a chord bearing of North 66°56'09" East, 1145.19 feet, to THE POINT OF BEGINNING.

Containing 7,554,757 square feet or 173.433 acres, as shown on that certain Survey of Phase I – Giverny for BOJ Homes at Twin Lakes, LLC; Le Jardin, LLC; BOJ Twin Lakes Investments, LLC; Macauley Twin Lakes Investments, LLC; BOJ Reserve Investments, LLC; Macauley Reserve Investments, LLC; Fairfield Financial Services, Inc, and First American Title Insurance Company, prepared by Rawle J. Stanley (GRLS #2890) of C.E.R.M., dated 12-09-2004, and last revised 12-29-2004.

**Legal Description**
**Parcel Phase II - Giverny**

All that tract or parcel of land lying and being in Land Lot 10, 11, 12, and 15, 9th District C, Fulton County, Georgia, being more particularly described as follows:

Beginning at 1/2" rebar set at the intersection of the south line of Land Lot 11 and the easterly right-of-way line of Hall Road (60' r/w), THENCE along said easterly right-of-way line of Hall Road along arc of a curve to the left, 281.43 feet said curve having a radius of 2091.10 feet and a chord of North 21°12'54" West, 281.22 feet, to a point;
THENCE along said easterly right-of-way line of Hall Road North 24°39'43" West, a distance of 896.40 feet to a point;
THENCE along said easterly right-of-way line of Hall Road along the arc of a curve to the left a distance of 201.07 feet, said curve having a radius of 3338.17 feet and a chord bearing of North 28°39'31" West, 201.04 feet, to a point;
THENCE along said easterly right-of-way line of Hall Road North 31°22'52" West, a distance of 601.25 feet to a point;
THENCE along said easterly right-of-way line of Hall Road along the arc of a curve to the left a distance of 203.64 feet, said curve having a radius of 1150.26 feet and a chord bearing of North 37°24'40" West, 203.38 feet, to a point;
THENCE along said easterly right-of-way line of Hall Road along the arc of a curve to the left a distance of 206.07 feet, said curve having a radius of 838.09 feet and a chord bearing of North 55°37'38" West, 205.55 feet, to a point;
THENCE along said easterly right-of-way line of Hall Road North 63°08'31" West, a distance of 298.56 feet to a point;
THENCE along said easterly right-of-way line of Hall Road along the arc of a curve to the right a distance of 167.89 feet, said curve having a radius of 600.25 feet and a chord bearing of North 51°48'56" West, 167.34 feet, to a point;
THENCE along said easterly right-of-way line of Hall Road along the arc of a curve to the right a distance of 189.05 feet, said curve having a radius of 850.57 feet and a chord bearing of

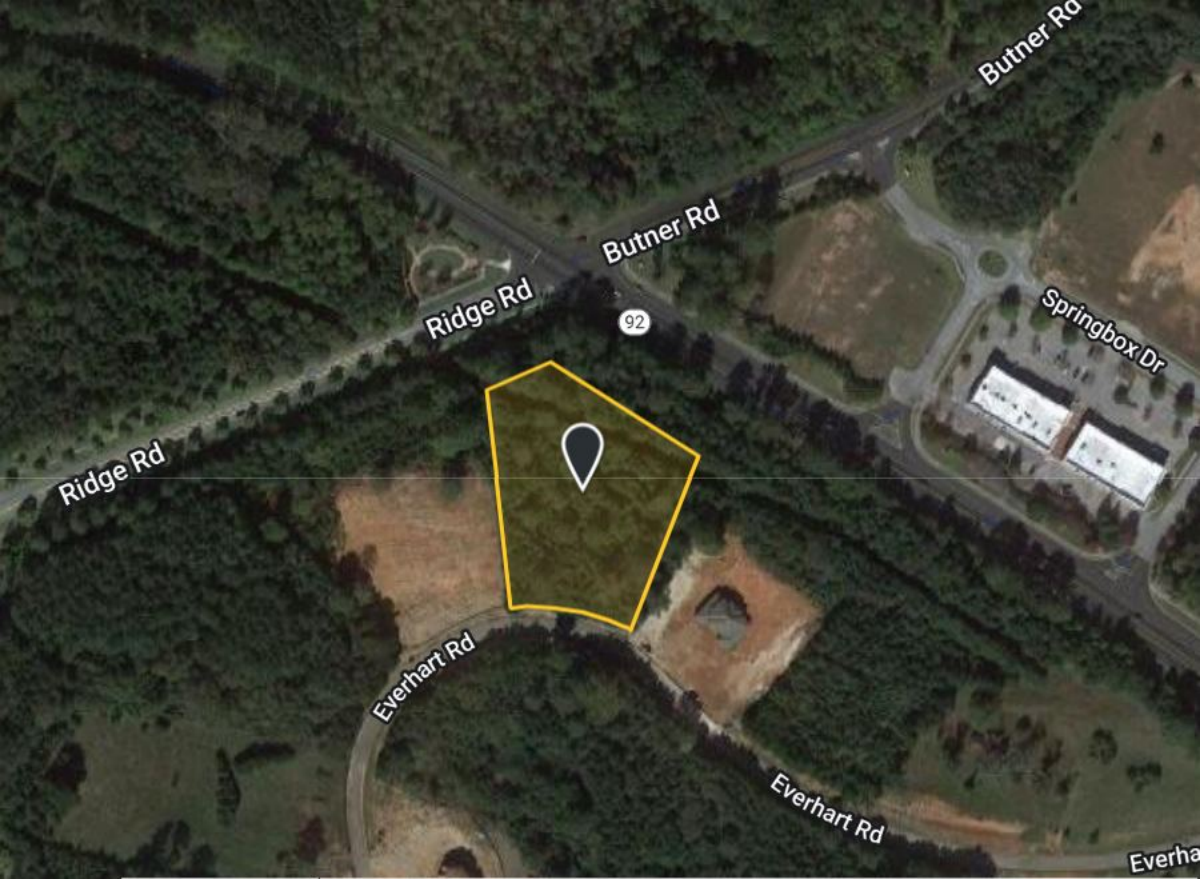
North 37°56'11" West, 188.66 feet, to a point;
THENCE along said easterly right-of-way line of Hall Road North 31°48'42" West, a distance of 334.73 feet to a 1/2" rebar set;
THENCE leaving said easterly right-of-way line of Hall Road North 00°14'21" West, a distance of 218.58 feet to a 1-1/2" square found;
THENCE North 89°49'34" East, a distance of 963.77 feet to a 1" crimp top pipe found;
THENCE North 00°10'59" West, a distance of 1183.25 feet to a point;
THENCE South 70°11'24" East, a distance of 362.27 feet to a point;
THENCE along the arc of a curve to the left a distance of 216.73 feet, said curve having a radius of 350.00 feet and a chord bearing of South 17°44'50" West, 213.29 feet, to a point;
THENCE South 00°00'27" West, a distance of 202.30 feet to a point;
THENCE along the arc of a curve to the right a distance of 97.29 feet, said curve having a radius of 525.00 feet and a chord bearing of South 05°18'59" West, 97.15 feet, to a point;
THENCE South 10°37'30" West, a distance of 166.58 feet to a point;
THENCE along the arc of a curve to the left a distance of 221.66 feet, said curve having a radius of 425.00 feet and a chord bearing of South 04°18'58" East, 219.15 feet, to a point;
THENCE South 19°15'26" East, a distance of 174.20 feet to a point;
THENCE along the arc of a curve to the right a distance of 122.02 feet, said curve having a radius of 475.00 feet and a chord bearing of South 11°53'52" East, 121.69 feet, to a point;
THENCE South 04°32'18" East, a distance of 22.99 feet to a point;
THENCE along the arc of a curve to the right a distance of 131.99 feet, said curve having a radius of 85.58 feet and a chord bearing of South 33°29'14" East, 119.29 feet, to a point;
THENCE South 85°02'24" East, a distance of 1871.55 feet to a point;
THENCE North 10°00'35" East, a distance of 98.18 feet to a point;
THENCE South 81°31'32" East, a distance of 783.70 feet to a point;
THENCE North 13°38'01" East, a distance of 163.41 feet to a point;
THENCE South 67°31'38" East, a distance of 1170.98 feet to a point;
THENCE North 90°00'00" East, a distance of 628.28 feet to a 1/2" rebar found on the southwesterly right-of-way line of Campbellton-Fairburn Road AKA State Route 92,(100' r/w);
THENCE leaving said southwesterly right-of-way line of Campbellton-Fairburn Road, South 35°21'44" West, a distance of 2756.88 feet to a 1/2" rebar found on the south line of Land Lot 11;
THENCE along said south line of Land Lot 11, North 89°44'28" West, a distance of 2303.08 feet to THE POINT OF BEGINNING.

Containing 10,642,085 square feet or 244.309 acres, as shown on that certain Survey of Phase II – Giverny for BOJ Homes at Twin Lakes, LLC; Le Jardin, LLC; BOJ Twin Lakes Investments, LLC; Macauley Twin Lakes Investments, LLC; BOJ Reserve Investments, LLC; Macauley Reserve Investments, LLC; Fairfield Financial Services, Inc, and First American Title Insurance Company, prepared by Rawle J. Stanley (GRLS #2890) of C.E.R.M., dated 12-09-2004, and last revised 12-29-2004.

**EXHIBIT "B"**

**Additional Property**

Any real property located within three (3) miles of the perimeter boundary of the real property described on Exhibit "A" attached hereto.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Springbox Dr
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Caveat Ct
Baffling Ln
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LE JARDIN
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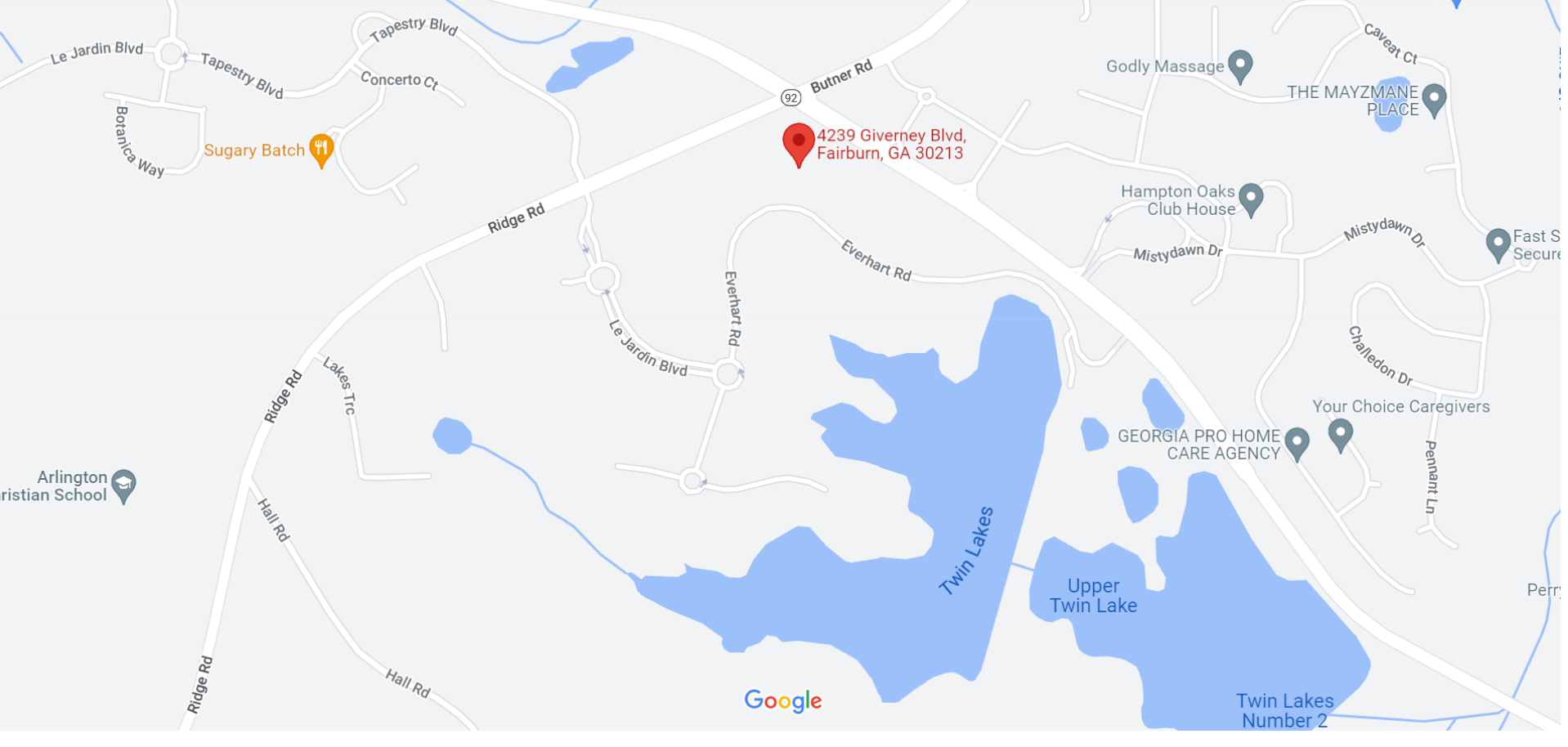
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Godly Massage
Caveat Ct
THE MAYZMANE
PLACE
Hampton Oaks
Club House
Mistydawn Dr
Mistydawn Dr
Fast S
Secure
Ridge Rd
Everhart Rd
Everhart Rd
Le Jardin Blvd
Ridge Rd
Lakes Trc
Chalfedon Dr
Your Choice Caregivers
GEORGIA PRO HOME
CARE AGENCY
Pennant Ln
Arlington
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Twin Lakes
Upper
Twin Lake
Perry
Ridge Rd
Hall Rd
Google
Twin Lakes
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