

AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR NORMAN DOWNES

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AMENDED AND RESTATED DECLARATION OF COVENANTS.

CONDITIONS AND RESTRICTIONS FOR NORMAN DOWNES

THIS AMENDED AND RESTATED DECLARATION is made this ____ day of _____, 2011 by **Norman Downes Homes Association, Inc.**, a Georgia nonprofit corporation (“Declarant”).

WITNESSETH:

WHEREAS, Boles & Harrison, a Georgia general partnership, recorded a Declaration of Covenants, Conditions, Restrictions for Norman Downes, on January 24, 1973, in Deed Book 606, Page 131, et seq., Gwinnett County, Georgia Records, as amended and supplemented from time to time by the following documents:

Recording Date	<u>Deed Book/Page</u>
December 19, 1979	1859/312 <i>et seq.</i>
August 28, 1980	2008/259 <i>et seq.</i>
January 26, 1981	2106/179 <i>et seq.</i>
February 23, 1982	2335/146 <i>et seq.</i>
April 14, 1982	2368/052 <i>et seq.</i>
September 23, 1982	2449/140 <i>et seq.</i> (collectively

referred to as the “Original Declaration”); and

WHEREAS, the Original Declaration was amended, restated, superseded and continued by that certain Amendment and Continuation of Covenants for Norman Downes, recorded on July 24, 1992 in Deed Book 7662, Page 1, *et seq.* of the real property records of the Clerk of Superior Court of Gwinnett County, Georgia (the “Continued Declaration”);

WHEREAS, Article XII, Section 4 of the Continued Declaration states that the Continued Declaration may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least two-thirds (2/3) of the total Association vote; and

WHEREAS, the Association desires to amend the Continued Declaration; and

WHEREAS, Owners holding at least two-thirds (2/3) of the total Association vote have voted for or consented to this Amended and Restated Declaration; and

WHEREAS, at least two-thirds of first Mortgagees or Owners have given their consent to this Amended and Restated Declaration; and

WHEREAS, Article X, Section 2 provides that unless two-thirds of the first Mortgagees or Owners give their consent, the Association shall not (a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection) other than personal property of the Association; (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner; (c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Property (The issuance and amendment of architectural standards, procedures, rules, and regulations or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this subsection.); (d) fail to maintain insurance, as required by this Declaration; or (e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property; and

NOW THEREFORE, pursuant to the rights reserved by the Association, the Association hereby amends and restates the Continued Declaration as follows:

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- Table of Exhibits -

<u>Exhibit</u>	<u>Name</u>
"A"	Definitions
"B"	Property Submitted
"C"	By-Laws of Norman Downes Homeowners Association, Inc.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NORMAN
DOWNES

Article I

Definitions

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

Article II

Property Subject To This Declaration

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

Section 2. Other Property. Only the real property described in Section 1 of this Article II is made subject to this Declaration. However, by one or more Supplementary Declarations, the Association has the right, but not the obligation, to subject other real property to this Declaration, as provided in Article IX.

Article III

Association Membership and Voting Rights

Section 1. Membership. Every Person who is the record Owner of a fee interest in any Lot that is subject to this Declaration is automatically a member in the Association. Membership shall not include Persons who hold a security interest only and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and

rights of use and enjoyment shall be as provided in this Declaration and in the By-Laws. Membership shall go along with and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor one (1) office held for each Lot owned.

Notwithstanding the foregoing, the Association shall have the right to grant non-voting annual memberships for the use of the Common Property and the amenities located thereon as provided in the By-Laws.

Section 2. Voting. Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be cast as those Owners decide and instruct the Secretary prior to any meeting. If the Secretary is not instructed, the Lot's vote shall be suspended in the event more than one Owner of a Lot attempts to cast it.

Article IV

Assessments

Section 1. Purpose of Assessment. The assessment provided for herein shall be used for the general purposes of administrative expenses and for promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of the Common Property and improvements thereto, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed to the Lot, whether or not it shall be stated in the deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special

assessments; and (c) specific assessments. All assessments, together with late charges, interest (not to exceed the maximum legal rate), costs, and reasonable attorney's fees actually incurred, shall be (a) a charge on the land and a continuing lien upon the Lot against which each assessment is made; and (b) the personal obligation of the Person who is the Owner of the Lot at the time the assessment becomes due. The grantee of each Owner shall be jointly and severally liable for the portion of an assessment as is due and payable at the time of transfer of the Lot. However, the liability of a grantee for the unpaid assessments of an Owner shall not apply to any first Mortgagee holder taking title through foreclosure proceedings.

The Association shall, within five (5) days after receiving a written request and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association certifying the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Assessments shall be levied equally on all Lots and shall be paid in such manner and on such dates as are fixed by the Board of Directors. Upon ten (10) days written notice, the Board may accelerate the annual assessment for delinquents. Unless the Board provides otherwise by resolution, the assessment shall be paid in a single annual installment.

The obligation to pay assessments shall commence as to each Lot on the first day of the month following the occupancy for a Residence on the Lot. The first annual assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Section 3. Computation. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated common expenses

of the Association during the coming fiscal year. The budget may include contributions to reserve funds for future maintenance and/or capital improvements.

The assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total budgeted common expenses, including reserves.

The annual assessment for the base year 2011 shall be \$250.

The Board shall not propose an increase in the amount of the annual assessment from one year to the next that is greater than the percentage increase in the Consumer Price Index as published by the Bureau of Labor Statistics for the preceding quarter or year, whichever is greater, unless a special meeting is called to explain the purpose of such an increase.

The Board may propose a budget that is the same as or less than the previous year's budget, which budget shall become effective without the need for a meeting, as provided below.

The Board shall deliver or mail a copy of the proposed common expense budget and notice of the amount of the assessment for each Lot to each Owner at least sixty (60) days prior to the beginning of the fiscal year. The proposed budget and assessment shall become effective unless disapproved by one-third (1/3) of the total Members in good standing at any special meeting of the Members called for the purpose of discussing the proposed budget.

Notwithstanding the above, in the event the proposed budget is disapproved or the Board fails to prepare and distribute the budget for any year, then until such a budget is prepared and distributed, the budget in effect for the immediately preceding year shall continue until a new budget is approved. The Board may propose a new budget at any time during the year to be delivered to the members at least thirty (30) days prior to the proposed effective date thereof.

Section 4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time if approved by the affirmative vote or written consent of fifty-one percent (51%) of the total Members in good standing, unless disapproved by more than one-third (33%) of Members in good standing. A meeting shall be held at which such special assessment shall be discussed. Notice of the special or annual meeting at which such assessment shall be discussed shall specify that purpose. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. Lien for Assessments. All assessments levied against any Lot, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall be secured by a lien on the Lot in favor of the Association. The Association shall have the right, but not the obligation to evidence the existence of the lien by filing a notice of lien in the Gwinnett County, Georgia, records. The lien shall be superior to all other liens and encumbrances on the Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage duly recorded in the Gwinnett County, Georgia, records and all amounts advanced under the terms of and secured by the Mortgage.

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

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments of assessment that are not paid when due shall be delinquent. Any

assessment or installment delinquent may incur a late charge in an amount as the Board may from time to time determine, which shall not exceed fifteen percent (15%) of the annual assessment payment. Owners who have not paid their assessment(s) shall receive a second notice in writing indicating the amount due the Association. The second notice shall include a statement that Owners whose accounts are delinquent shall be denied the right to enjoy Association amenities. If the assessment is not paid within thirty (30) days after written notice, a lien shall attach and, in addition, the lien shall include the late charge, interest at the maximum rate permitted by Georgia law on the principal amount due, all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. The existence of the lien may, but is not required to be, evidenced by the filing of a notice of lien in the Gwinnett County, Georgia, records. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charge as a debt or to foreclose the lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Lot. The Board may also suspend the right of an Owner and his tenants, guests and invitees to use the Common Properties if any payment due the Association is more than thirty (30) days past due.

No Owner may waive or otherwise exempt himself or herself from liability for assessments, by abandoning the Lot or in any other manner. The obligation to pay assessment is a separate and independent covenant on the part of each Owner and no reduction of any assessment shall be claimed or allowed by reason of (a) any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Law; (b) for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association; or (c) from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

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

Section 7. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XII, Section 1 and the costs of maintenance performed by the Association that the Owner is responsible for under Article V, Sections 1 and 2 shall be specific assessments. The Board may also specifically assess Lot for the following Association expenses:

- (a) except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility under this Declaration, any common expenses benefiting less than all of the Lots or significantly disproportionately

benefiting all Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received;

(b) any common expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by licensees or invitees of any such Lot or Lots.

Article V

Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements located on the Common Property. The Association shall maintain the entry features for the Community and shall maintain and pay the expenses for any utilities provided to the entry features.

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether located within or without the Community, where the Board has determined that such maintenance would benefit all Owners.

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

The Association shall perform all maintenance in a manner consistent with the Community-Wide Standard.

Section 2. Owner's Responsibility. Except as provided in Section 1 above, all maintenance of the Lot and the Residence, all structures, parking areas, landscaping, and other improvements on the Lot shall be the sole responsibility of the Owner, who shall maintain the Lot in a manner consistent with the Community-Wide Standard and this Declaration.

In the event that the Board of Directors determines that a Lot is not maintained in a manner consistent with the Community-Wide Standard and this Declaration, except in an emergency situation, the Board of Directors shall give the Owner written notice of the Association's intent to provide the necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall state the maintenance, repairs, or replacement deemed necessary.

The Owner shall have thirty (30) days after receipt of the notice to complete the maintenance, repair, or replacement. In the event that the maintenance, repair, or replacement is not capable of completion within a thirty (30) day period, the Owner shall begin the work and shall complete it within a reasonable time. If any Owner does not comply, the Association may provide the maintenance, repair, or replacement at Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

Article VI

Use Restrictions and Rules

Section 1. General. This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and occupants of Lots. These use restrictions may only be amended in the manner provided in Article XII, Section 4, regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners,

adopt, modify, or delete rules and regulations applicable to the Community. These rules shall be distributed to all Owners prior to the date that they are to become effective and after distribution shall be binding upon all Owners and occupants of Lots until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total eligible Association vote.

Section 2. Residential Use. Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Community, including business uses ancillary to a primary residential use, except that the Owner or occupant residing in the Residence on a Lot may conduct such ancillary business activities within the residence so long as:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the residence;
- (b) the business activity does not involve persons coming onto the Community who do not reside in the Community or door-to-door solicitation of residents of the Community;
- (c) the business activity conforms to all zoning requirements for the Community; and
- (d) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board of Directors.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of

goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether:

(i) the activity is engaged in full or part-time;

(ii) the activity is intended to or does generate a profit; or

(iii) a license is required for the activity. Notwithstanding the above, the use of a Lot by an on-site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this Section.

Section 3. Single Families. Except as provided below, no Lot shall be occupied by more than a single family. As used herein, the term "single family" shall mean one (1) or more persons, provided all persons occupying the Lot are interrelated by blood, adoption, or marriage plus no more than one (1) additional person who is not so related. If persons occupying a Lot are not all interrelated by blood, adoption, or marriage, then the number of persons occupying such Lot shall not exceed the number of bedrooms in the dwelling by more than two (2) persons. The words "by blood" shall be deemed to encompass only children, grandchildren, grandparents, brothers, sisters, nieces, nephews, parents, aunts, uncles, and first cousins, and no other degree of kinship.

"Occupancy," for purposes of this Declaration, shall be defined as staying overnight in a Lot for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any year.

This single-family occupancy restriction shall not apply to require the removal of any person occupying a Lot on the date on which this Declaration is recorded in the Gwinnett County, Georgia land records. However, no person not an occupant of a Lot on the date on which this Declaration is recorded in the Gwinnett County, Georgia land records, shall be permitted to

occupy a Lot if either before or after the occupancy by such person that Lot does not or would not comply with the single family occupancy restriction set forth in this subparagraph.

Section 4. Residence: Building Type, Size and Location. No Residence shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed three stories in height and a private garage for not more than four cars. All ranch houses shall consist of a minimum of 1,800 square feet of heated living area. All other types of structures shall consist of a minimum of 2,000 square feet of heated living area. A ranch home shall be defined as having all of its living area for the purpose of minimum square footage requirements on one level. In the computation of minimum square footage requirements set forth above, the area of any garages, patios, green houses or storage areas shall not be taken into consideration.

No Residence shall be located on any Lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat. In any event, no building shall be located on any Lot nearer than fifty (50) feet to the front lot line, or nearer than ten (10) feet to an interior lot line, except that a two-foot side yard shall be required for a garage or other permitted accessory building located eighty-five (85) feet or more from the minimum building setback line.

No accessory buildings shall be located on a Lot without the prior written permission of the Board of Directors as provided for in Section 10 of this Article.

No Residence shall be located on an interior Lot nearer than ten (10) feet to the rear lot line. For the purposes of this covenant, eaves, steps, carports and open porches shall not be considered as part of a building; provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

No individual sewage disposal system shall be permitted on any Lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the Georgia Department of Public Health. Approval of such system as installed shall be obtained from such authority.

Section 5. Signs. Except as may be required by legal proceedings, no advertising posters, billboards or signs of any kind shall be erected, placed or permitted to remain in the Community without the prior written consent of the Board or its designee, except that one (1) professionally lettered "For Sale" or "For Rent" sign may be erected upon a Lot. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs.

Section 6. Vehicles. The term "vehicles," as used in this provision, shall include, but not limited to, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles.

Recognizing the narrowness of streets in the community, parking on the street in front of any Lot impedes the safe navigation of vehicles moving through the community. While it is sometimes necessary for residents and visitors to park on the streets of the community, residents are encouraged to make provisions for off street parking of their vehicles.

Parking in yards is prohibited. All vehicles shall be parked within garages, driveways or other paved parking areas located on a Lot.

No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than seven (7) days if it is unlicensed or if it is

in a condition so that it cannot operate on public streets. After the seven-day period, the inoperable vehicle shall be considered a nuisance and may be removed from the Community. No boat, recreational vehicle, motor home, mobile home, or towed vehicle shall be temporarily kept or stored in the Community for any period in excess of thirty-six (36) hours unless kept in a garage unless a waiver is requested by the owner and granted by the Board. Vehicles parked in violation of this provision shall be considered a nuisance and may be removed from the Community. Light Trucks with mounted campers that are an Owner's or occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. No trucks with a manufacturer's GWV (Gross Vehicle Weight) exceeding 8,500 lbs. or semi-trailers or the cabs of these trucks shall be parked, kept or stored within the Community, and if so parked, kept, or stored shall be considered a nuisance and may be removed from the Community.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

Section 7. Leasing. Lots may be leased for residential purposes only. All leases shall have a minimum term of six (6) months unless prior written approval is given by the Board. All leases shall require that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association and shall also obligate the tenant to comply with these documents.

Section 8. Time-shares. Time-share estates, time-share intervals, time-share programs, time-share projects, and time-share uses as defined in Official Code of Georgia Annotated § 44-3-162 (O.C.G.A. § 44-3-162) are prohibited within the Community. This section expressly

prohibits time-share programs as provided for in Section 44-3-165(a) of the Georgia Time-Share Act (O.C.G.A. § 44-3-160, *et seq.*)

Section 9. Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines adopted pursuant to the Declaration which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of Lots and guests and invitees of occupants or Owner. The Owner shall be responsible for ensuring that the occupant, and the guests, invitees and licensees of the Owner or the occupant strictly comply with all provisions of the Declaration, By-Laws, and any rules and regulations adopted by the Board of Directors. Fines may be levied against Owners or occupant. If a fine is first levied against an occupant and is not paid within thirty (30) days, the fine may then be levied against the Owner.

Section 10. Architectural Standards. In order to preserve the natural setting and beauty of the Community, to establish and preserve a harmonious and aesthetically pleasing design for the Community and to protect and promote the value of the Community, the Lots, Residences, and Common Areas, all improvements located therein or thereon shall be subject to the restrictions set forth in this section.

The Covenant Compliance Committee shall constitute a standing committee of the Association. The Committee shall consist of the Board of Directors unless the Board delegates to other Lot Owners the authority to serve on the Committee as provided in Article V of the By-Laws. At all times, however, the chairperson of the Committee shall be a member of the Board of Directors.

Application for modifying existing improvements or for adding of new improvements that alter the appearance of member's lots shall be in writing and shall provide such information

as the Committee may reasonably require. The Covenant Compliance Committee may promulgate from time to time written architectural standards, policies, and guidelines (the "Standards") governing the construction, location, and design of improvements, the contents of submissions of plans and specifications, and other information required to evidence compliance with and obtain approval pursuant to the Section. Changes to architectural standards shall be approved by majority vote of the Board of Directors and will be in effect as of the date of such vote. Changes to architectural standards may not be imposed retroactively. Any such Standards published by the Covenant Compliance Committee shall be binding and enforceable on all Owners with respect to all improvements in the Community requiring the approval of the Covenant Compliance Committee unless such Standards are disapproved by one-third (1/3) of the total Association vote.

In the event that the Covenant Compliance Committee or its designated representative fails to approve or disapprove an application within forty-five (45) days after it has been submitted, its approval will not be required and this Section will be deemed complied with; provided, however, even if the requirements of this Section are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the By-Laws, or the rules and regulations.

Review and approval of any application pursuant to this Section is made on the basis of aesthetic considerations only and neither the Board of Directors nor the Covenant Compliance Committee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board of Directors, the Covenant Compliance 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 Residence or Lot.

Each Owner acknowledges that the members of the Board of Directors and the Covenant Compliance Committee will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of any work done or proposed shall not be deemed to constitute a waiver of any right to withhold approval as to similar work subsequently or additionally submitted.

Section 11. 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. However, those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or occupants or the Owner of any property located adjacent to the Community may be removed by the Board. In addition, the Board by rule or regulation shall have the power to limit the number and types of pets which may be kept on a Lot. No pets shall be kept, bred or maintained for any commercial purpose. Dogs and cats shall at all times whenever they are outside be on a leash held by a responsible person or otherwise confined in a manner acceptable to the Board. Without prejudice to the Board's right to remove any such household pets, the Board may prohibit a household pet that has caused damage or injury from being walked in the Community. Pets shall be registered, licensed and inoculated as required by law.

Section 12. 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 Lot. No property within the Community shall be used, in whole or in part, for the storage of

any property or thing that will cause a 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 discharge foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity, including the burning of yard waste, shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within the Community. 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 Community. Without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier or other sound device, except for devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law. However, any siren or device for security purposes shall contain a device which causes it to automatically shut off within fifteen (15) minutes. No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on the Common Property. Subject to any governmental regulations, except for during approved construction, no person shall burn rubbish, garbage or any other form of solid waste on any Lot or on the Common Property.

Section 13. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities which might tend to cause disorderly, unsightly, or unkempt conditions, including without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, shall not be pursued or undertaken in any part of the Community.

Section 14. Antennas. Satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite or other signals of any kind, except that the Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Community; and (i) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or (iii) antennas designed to receive television broadcast signals ((i), (ii), and (iii) collectively, “Permitted Devices”) shall be permitted, provided that any such Permitted Device is placed in the least conspicuous location on the Lot (generally being the rear yard) at which an acceptable quality signal can be received, unless such screening unreasonably interferes with the use of such Permitted Device. This provision shall not apply to any such structures on any Lot existing on the date on which this Amended and Restated Declaration is recorded in the Gwinnett County land records.

Section 15. Tree Removal. No trees, shrubs or bushes having a trunk diameter of twelve (12) inches or more shall be removed without the express consent of the Board or its designees except for (a) diseased or dead trees; (b) trees needing to be removed to promote the growth of other trees or for safety reasons; and (c) trees within ten (10) feet of the residence, driveway, walkways and septic field constructed or to be constructed on the Lot.

Section 16. Sight Distance At Intersection. No fence, wall, hedge or shrub planting which obstruct sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property line and a line connecting them at a point twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of

the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersection unless foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 17. Garbage Cans, Building Materials, Etc. All garbage cans, building materials, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be concealed from view of neighboring Lots and Common Property and the street on which the Lot (on which the item is located) fronts. All construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate.

Except for building materials employed during the course of construction of any structure approved by the Covenant Compliance Committee, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened from view of neighboring Lots and the Common Property and the street on which the Lot (on which the building materials are located) fronts or otherwise handled in a manner approved by the Covenant Compliance Committee. Clotheslines shall not be permitted on the Lots or on the Common Property. Equipment for the storage or disposal of rubbish, trash and garbage shall be kept in a clean and sanitary condition and must be either underground or behind the dwelling.

Section 18. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee.

Section 19. Firearms. The use of firearms on the Common Property or outside of residences in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

Section 20. Fences. No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line. No fence shall be erected in front of any home with the exception of decorative fences not exceeding thirty (30) inches in height.

Section 21. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags (except a single residential-sized American flag), and similar items must be approved by the Covenant Compliance Committee.

Section 22. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, and approved by the Covenant Compliance Committee.

Section 23. Playground. Any playground or other play areas or equipment located on the Common Property shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 24. Abandoned Personal Property. Personal property is strictly prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Property in violation of this Section, then the Board may remove and either discard or store the personal property in a location which the Board may determine. If personal property is removed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity.

Notwithstanding anything to the contrary herein, the Board may elect to impose a fine of up to \$50.00 and/or use other available sanctions.

Article VII

Insurance and Casualty Losses

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

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

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

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

(a) All policies shall be written with a company authorized to do business in Georgia.

(b) Authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors or its duly authorized agent; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by the Board of Directors. In conducting such reviews the Board may engage an expert whom in its sole discretion it deems fit.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;

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

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

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

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

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

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be determined in the Board of Directors' best business judgment, and, if available, shall at least equal one-quarter (1/4) of the annual assessment plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days prior written notice to the Association. The Association

shall also obtain construction code endorsements, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

Section 2. Damage and Destruction - Insured by Association.

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

(b) Repair and Reconstruction. The Board of Directors must proceed to repair or reconstruct any damage or destruction to the Common Property on behalf of the Association unless within sixty (60) days after the casualty, it obtains the agreement of at least two-thirds (2/3) of the total Association vote to not repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available, provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

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

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

Section 3. Damage and Destruction - Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner within seventy-five (75) days after the damage or destruction. However, where repairs cannot be completed within seventy-five (75) days, they shall begin within the required period and shall be diligently and continuously pursued until their completion. Alternatively, the Owner may decide to destroy and remove all improvements on the Lot within seventy-five (75) days after such damage or destruction.

Article VIII

Condemnation

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after the taking, Owners holding at least one-third (1/3) of the total Association vote disagree, the Association shall restore or replace the improvements taken on the remaining land included in the Common Property to the extent lands are available. The provisions of Article VII, Section 3, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

Article IX

Annexation of Additional Property

Subject to the consent of the owner thereof, upon the affirmative vote, or written consent, or any combination thereof, of unless one third (1/3) of Owners of the total Association vote to disapprove, by action of the Board of Directors may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Gwinnett County, Georgia, records a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided in the Supplementary Declaration.

Article X

Mortgagee Provisions

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

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

- (a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any 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 Owner of a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws of the Association 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 Mortgage holders.

Section 2. Approval of Action. So long as required by the Federal Home Loan Mortgage Corporation the following provisions apply in addition to and not in lieu of the foregoing. Unless two-thirds (2/3) of the first Mortgagees or Owners, give their consent, the Association shall not:

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

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

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

Section 3. No Priority. No provision of this Declaration or the 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 Property.

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

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

Section 6. Applicability of This Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

Section 7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

Article XI

Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and adjacent portion of the Common Property or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered (in accordance with the terms of this Declaration). The easement shall be five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point. However, an easement for encroachment shall not exist if the willful conduct by an Owner, tenant, or the Association caused the encroachment.

Section 2. Easements for Use and Enjoyment. Every Owner of a Lot shall have a right and easement of entry and exit, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use, including, but not limited to fees for eligible nonmembers, of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions of the Common Property at certain designated times by an Owner, his family, tenants, guests, and invitees;
- (b) the right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against his Lot which is hereby

provided for remains unpaid and to suspend the right of an Owner to use the recreational facilities for violation of those amenities rules as published;

- (c) the right of the Association to borrow money for the purpose of improving the Common Property, or for constructing, repairing, or improving any facilities located or to be located on the Common Property, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property. However, the Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges reserved or established for the benefit of any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Community. (Any provision in this Declaration or in any Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights in the Mortgage by the holder of the Mortgage in the event of a default shall not cancel or terminate any rights, easements or privileges reserved or established in this Declaration for the benefit of any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Community.) No mortgage conveying all or a portion of the Common Property shall be effective unless an instrument agreeing to the Mortgage has been approved by Owners holding at least fifty-one percent (51%) of the total vote of the Association; and
- (d) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to any conditions agreed on by the members of the Association. No dedication or transfer of the Common Property shall be effective unless an instrument

agreeing to the dedication or transfer has been approved by Owners holding at least fifty-one (51%) of the total Association vote.

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

Section 3. Easements for Utilities. There is reserved to the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repair, replacement, and maintenance of :

- (a) all utilities serving the Community or portion of the Common Property, including, but not limited to, gas, water, sanitary sewer, telephone and electricity;
- (b) water runoff and storm drainage systems; and
- (c) any other services such as, but not limited to, a master television antenna system, cable television system, or security system which may be installed to serve the Community. It shall be expressly permissible for the Association, or its designee, to do or to authorize the installation, repair, replacement, and maintenance of the wires, conduits, cables and other equipment related to providing any such utility or service.

Should a party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

Section 4. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Article XII, Section 2, the Board shall have the right, but not the obligation, to enter upon any property within the Community for emergency, security, or safety reasons. This right may be exercised by the Association, the manager, if any, and all policemen, firemen,

ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. The Board has the right to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard if an Owner or occupant does not cure the condition after request by the Board.

Section 5. Easement for Maintenance. The Association shall have a perpetual easement for its benefit across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article V. This maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect the property, and damage shall be repaired by the Person causing the damage at its sole expense.

Article XII

General Provisions

Section 1. Enforcement. Each Owner and every occupant of a Lot shall comply strictly with this Declaration, the By-Laws, the rules and regulations, as they may be lawfully amended or modified from time to time, and with any deed restrictions. The Board of Directors may impose fines which shall be collected as provided for the collection of assessments in Article IV of this Declaration, or other sanctions. Failure to comply with this Declaration, the By-Laws or the rules and regulations shall be grounds for an action for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or by an aggrieved Owner in a proper case. Failure by the Association or any Owner to enforce any of the foregoing provisions shall not be a waiver of the right to enforce those provisions in the future.

Section 2. Self-Help. In addition to any other remedies, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Property to abate or remove any structure, thing or condition which violates this Declaration, the By-Laws, or the rules and regulations. All costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for the collection of assessments as provided in Article IV of this Declaration.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heir, successors, and assigns, perpetually to the extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless terminated as provided in O.C.G.A. Section 44-5-60(d). Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that the provisions of this Declaration may be extended and renewed as provided in this Section. Pursuant to O.C.G.A. Section 44-5-60, these covenants shall run commencing on the date this Declaration is recorded in the Gwinnett County land records.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by the Association:

- (a) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict;
- (b) if an amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration;
- (c) if an amendment is required by an institutional or governmental lender or purchaser of mortgage loan., including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable the lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or
- (d) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgage loans on the Lots subject to this Declaration. However, any such amendment shall not adversely affect the title to any Owner's Lot unless the Lot Owner consents to the amendment in writing.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least fifty-one (51%) of the total Association vote. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified in the amendment.

Section 5. Security. The Association may but shall not be required to, provide measures or take actions which directly or indirectly improve safety of the Community. However, each Owner, for themselves and their tenants, guests, licensees, and invitees acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security for the Community. It shall be the responsibility of each Owner to protect his or her person and property, and all responsibility to provide security shall lie solely with each Lot Owner. The

Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Section 6. Dispute Resolution. Any Owner or occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or occupant files any lawsuit against the Association, the Board, or any director. The Owner or occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than thirty (30) days from the date of receipt of the notice of hearing by the person requesting the hearing.

Section 7. Partition. The Common Property shall remain undivided, and no Lot Owner or any other Person shall bring any action for partition or division of the whole or any part of the Common Property without the written consent of at least fifty-one (51%) of Owners.

Section 8. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 9. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision

which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 10. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 11. Intentionally Deleted.

Section 12. Indemnification. In accordance with the Georgia Nonprofit Corporation Code, and to the full extent allowed by Georgia law, the Association shall indemnify every person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such person is or was serving as a director or officer of the Association against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the person is proper under the circumstances.

Section 13. Notice of Sale or Lease. In the event an Owner sells or leases his or her Lot, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require.

Section 14. Agreements. All agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 15. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate the right or privilege.

Section 16. Variances. Notwithstanding anything to the contrary contained in this Declaration, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would be consistent with the overall scheme of development for the Community.

Section 17. Use of Facilities by Nonresidents of Norman Downes. The Board of Directors shall have the right to grant use rights to the Community recreational facilities to nonmembers. The extent and term of nonmembers use and the fee to be charged shall be determined by the Board. Any nonmember entitled to use the Community recreational facilities shall be subject to the use restrictions and rules and regulations contained in this Declaration, the By-Laws and the rules and regulations. Such nonmembers shall also be subject to the sanctions outlined in the Declaration, the By-Laws and the rules and regulations, including, but not limited to suspension of use rights for failure to timely pay fees. Eligible nonmembers shall have a

nonexclusive easement which shall include, without limitation, the right of ingress, use of and egress to the recreational facilities. and the right of access, ingress, use and egress for vehicular and pedestrian traffic over, under, or in the Community parking areas and walkways. The provisions of this Subsection shall apply notwithstanding any contrary provisions in this Declaration, the By-Laws, Articles of Incorporation, rules and regulations, use restrictions and any amendments to any of the foregoing.

IN WITNESS WHEREOF, the undersigned, being the duly appointed officers of the Norman Downes Homes Association, Inc. herein, have executed this instrument and affixed the Corporate seal this ___ day of _____, 2011

NORMAN DOWNES HOMES ASSOCIATION, INC.

By: _____
President

Attest: _____ (SEAL)
Secretary

(CORPORATE SEAL)

Signed, sealed, and
delivered this day of _____
2011, in the presence of:

Unofficial Witness

NOTARY PUBLIC
My Commission Expires: _____

EXHIBIT "A"
Defined Terms

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

(a) "Association" shall mean Norman Downes Homes Association, Inc., a nonprofit Georgia corporation, its successors and assigns.

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

(c) "By-Laws" shall refer to the By-Laws of Norman Downes Homes Association Inc., attached to this Declaration as Exhibit "C" and made a part of this Declaration.

(d) "Common Property" shall mean any and all real and personal property and easements and other interests, together with the facilities and improvements located on the property, now or in the future owned by the Association for the common use and enjoyment of the Owners.

(e) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto, and such additions thereto as may be made by the Association by Supplementary Declaration of other real property.

(f) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association.

(g) "Covenant Compliance Committee" shall mean that certain committee formed by the Board as further described in Article VI, Section 10 of this Declaration.

(h) "Lot" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a plat recorded or to be recorded in the Gwinnett County, Georgia, records.

(i) "Member" shall mean a Person subject to membership pursuant to Section 3.1.

(j) "Majority" means those eligible votes by Owners, or other group as the context may indicate, totaling at least fifty-one percent (51%) of the total eligible number.

(k) "Mortgage/Mortgagee" means a mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to a Tract. A "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

(l) "Owner" means the record title holder of a Lot, but excluding in all cases any Mortgagee. If more than one Person owns a Lot, the term "Owner" shall refer to all such co-Owners collectively, who shall be jointly and severally responsible for the obligations of an Owner and shall share the rights of an Owner.

(m) "Person" means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

(n) "Dwelling" means a portion of the Community, whether improved or unimproved, which is intended for development, use, and occupancy for a single family. The term shall include within its meaning, by way of illustration but not limitation, each numbered lot shown on a recorded subdivision plat with respect to any portion of the Community, together with the structures, if any, constructed thereon, as well as vacant land intended for further subdivision, but shall not include Common Property or property dedicated to the public.

EXHIBIT "B"

Property Submitted

All that tract or parcel of land lying and being in Land Lots 161 and 162 of the 7th District of Gwinnett County, Georgia, and being lots 1 through 4 and lot 13 of Block A, Unit One, Norman Downes Subdivision, lots 1 through 13 of Block B, said unit and subdivision, lots 1 through 30 of Block C, said unit and subdivision, lots 27 through 33 and lots 53 through 87 of Block D, said unit and subdivision, and lots 11 through 20 of Block F, said unit and subdivision, all as shown on a subdivision plat of Norman Downes prepared by Charles Russell Dean, Registered Land Surveyor, dated August 24, 1972, recorded in Deed Book Z, Page 6 in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia.

All that tract and parcel of land lying in Land Lots 161 and 162, 7th District, Gwinnett County, Georgia, and being lots 5 through 12 of Block A, Section One, Unit Two, Norman Downes Subdivision, lots 31 through 44 of Block C, said section, unit and subdivision, and lots 1 through 10 of Block F, said section, unit and subdivision, all as shown on a subdivision plat of Norman Downes prepared by Charles Russell Dean, Registered Land Surveyor No. 1576, recorded in Plat Book Z, Page 255, Gwinnett County Records, and being lots 34 through 36, lots 37-R through 46-R, and lots 49 through 52, all of Block E, Section 2, Unit. 2, of Norman Downes Subdivision, and all as shown on a subdivision plat of Norman Downes prepared by Charles Russell Dean, Registered Land Surveyor No. 1576, recorded in Plat Book 1, Page 111, Gwinnett County Records.

All that tract and parcel of land being located in Land Lots 161 and 162 of the 7th District, Gwinnett County, Georgia, and more particularly described on Exhibit "A" to the Supplemental Declaration recorded in Deed Book 1859, Page 312 of the Gwinnett County records, proposed to be known as Lots 13 through 26, Block D, Unit 4, Norman Downes Subdivision, and Lot 21, Block F, Unit 4, Norman Downes Subdivision, all as shown on a subdivision plat of Unit 4 of Norman Downes Subdivision prepared by Charles Russell Dean, Registered Land Surveyor No. 1576, recorded in Plat Book 11, Page 288, Gwinnett County Records.

All that tract and parcel of land being located in Land Lots 161 and 162 of the 7th Land District, Gwinnett County, Georgia, and more particularly described on Exhibit "A" attached to the Supplemental Declaration recorded in Deed Book 2106, Page 179 of the Gwinnett County land records, proposed to be known as Lots 3 through 12, inclusive of Block D and Lots 9 through 20, inclusive, of Block E and Lots 22 through 25, inclusive of Block F, and Lots 1 through 7, inclusive of Block G of Unit 5 of Norman Downes Subdivision, all as shown on a subdivision plat of the said Unit 5 of Norman Downes Subdivision prepared by Charles Russell Dean, Registered Land Surveyor No. 1576, which Plat of Subdivision is recorded in Plat Book 14, Page 243, Gwinnett County Plat Records.

All that tract and parcel of land being located in Land Lot 202 of the 7th Land District, City of Duluth, Gwinnett County, Georgia, and being more particularly described on Exhibit "A" to the Supplemental Declaration recorded in Deed Book 2335, Page 146 of the Gwinnett County records, proposed to be known as Lots 1 through 59, inclusive, Block H, Unit 3 of Norman Downes Subdivision, all as shown on a Plat of said Subdivision of said Unit 3 of Norman Downes Subdivision, prepared by Charles Russell Dean, Registered Land Surveyor No. 1576, which Plat of Subdivision is recorded in Plat Book 17, Page 172, Gwinnett County Plat Records.

All that tract and parcel of land being located in Land Lot 161 of the 7th Land District, City of Duluth, Gwinnett County, Georgia, and more particularly described on Exhibit "A" to the Supplemental Declaration recorded in Deed Book 2368, Page 52 of the Gwinnett County land records, proposed to be known as Lots 4, 5, 6, 7, 8, Block E, and Lots 26, 27, 28, and 29, Block F of Unit 6 of Norman Downes Subdivision, all as shown on a Subdivision Plat of the said Unit 6 of Norman Downes Subdivision prepared by American Engineers and Surveyors, Inc., Registered Land Surveyors, dated December 18, 1981, which Plat of Subdivision is recorded in Plat Book 17, Page 264, Gwinnett County Plat Records.

All that tract and parcel of land being located in Land Lot 161 of the 7th Land District, City of Duluth, Gwinnett County, Georgia, and more particularly described on Exhibit "A" to the Supplemental Declaration recorded in Deed Book 2449, Page 140 of the Gwinnett County records, proposed to be known as Lots 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44,

45, 46, 47, 48, 49, 50, 51, 52 and 53, Block F, Unit 7 of Norman Downes Subdivision, all as shown on a Subdivision Plat of the said Unit 7 of Norman Downes Subdivision prepared by J. A. Page and Associates, Registered Land Surveyors, dated August 10, 1982, which Plat of Subdivision is recorded in Plat Book 19, Page 71, Gwinnett County Plat Records.

EXHIBIT "C"

BY-LAWS

OF

NORMAN DOWNES HOMES ASSOCIATION, INC

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BY-LAWS
OF
NORMAN DOWNES HOMES ASSOCIATION, INC.

Article I
Name, Membership, Applicability, and Definitions

Section 1. Name. The name of the Association shall be Norman Downes Homes Association, Inc. ("Association").

Section 2. Membership. The Association shall have one class of membership, as is more fully set forth in the Declaration of Covenants, Conditions and Restrictions for Norman Downes ("Declaration"). The provisions of the Declaration pertaining to membership are by this reference made a part of these By-Laws.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

Article II
Association: Meetings, Quorum, Voting, Proxies

Section 1. Annual Meetings. The regular annual meeting of the members shall be held during November or December of each year at a date, hour, and place to be set by the Board of Directors.

Section 2. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a Majority of the Board of Directors or upon a petition signed by Owners holding at least twenty-five percent (25%) of the total Association vote. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

Section 3. Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of record of each Lot a notice of each annual or special meeting of the Association stating the purpose of the special meeting, as well as the time and place where it is to be held. If an Owner wishes notice to be given at an address other than his or her Lot, he or she shall have designated by notice in writing to the Secretary such other address. The mailing of such notice or delivery of such notice by leaving at the residence located on the Lot in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than seven (7) nor more than thirty (30) days before a special meeting and not less than twenty-one (21) nor more than sixty (60) days before an annual meeting.

Section 4. Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

Section 5. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a Majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 6. Voting. The voting rights of the members shall be as set forth in the Declaration, and these voting rights are specifically incorporated in these By-Laws. No Owner shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors if that Owner is shown on the books or management accounts to be more than thirty (30) days delinquent in any payment due the Association or if an Owner has had his voting rights suspended for the infraction of any provision of the Declaration, the By-Laws, or any rule of the Association. If the voting rights of an Owner have been suspended, that Owner shall not be counted as an eligible vote for purposes of establishing a quorum.

Section 7. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Proxies may be delivered to the Board by personal delivery, U.S. mail, telephone or facsimile transmission to any Board member. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his or her Lot, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

Section 8. Quorum. The presence, in person or by proxy, of Owners holding at least twenty-five percent (25%) of the total eligible Association vote shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 9. Action Taken Without a Meeting. Any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

- (a) A written ballot shall:
 - (1) Set forth each proposed action; and
 - (2) Provide an opportunity to vote for or against each proposed action

(b) Approval by written ballot pursuant to this Section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(c) All solicitations for votes by written ballot shall:

(1) Indicate the number of responses needed to meet the quorum requirements;

(2) State the percentage of approvals necessary to approve each matter other than election of directors; and

(3) Specify the time by which a ballot must be received by the Association in order to be counted.

(d) A written ballot may not be revoked. The association shall maintain such ballots in its file for a period of at least three (3) years.

Article III

Board of Directors: Numbers, Powers, Meetings

A. Composition and Selection.

Section 1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors composed of nine (9) Persons. The directors shall be members or spouses of such members; provided, however, no Person and his or her spouse may serve on the Board at the same time. No Person shall be eligible for election to the Board of Directors if any assessments or other charges owed to the Association with respect to his or her Lot are more than thirty (30) days past due at the time of the election.

Section 2. Nomination of Directors. Elected directors shall be nominated from the floor and may also be nominated by a Nominating Committee, if a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

Section 3. Election and Term of Office. Those directors serving on the effective date of these Amended and Restated By-Laws shall remain in office until the terms for which they were elected expire. At each annual meeting thereafter, directors shall be elected to succeed those directors whose terms are expiring and shall serve a term of three years or until their successors are elected. All eligible members of the Association may vote on all directors to be elected and the candidate(s) receiving the most votes shall be elected.

Section 4. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the members of the Board of Directors may be removed, with or without cause, by Owners holding a Majority of the total Association vote and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Owners shall be given at least ten (10) days notice of the calling of the meeting and its purpose and shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a Majority vote of the directors at a meeting, a quorum being present.

Section 5. Vacancies. Vacancies on the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. Each director so selected shall serve the unexpired portion of the term of his predecessor.

B. Meetings.

Section 6. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a Majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of the meetings.

Section 7. Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone or facsimile communication, either directly to the director or to a person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph company shall be given at least forty-eight (48) hours before the time set for the meeting.

Section 8. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 9. Quorum of Board of Directors. At all meetings of the Board of Directors, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting cannot be held because a quorum is not present, a Majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time that the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 10. Compensation. No director shall receive any compensation from the Association for acting as a director unless approved by a Majority of the Owners.

Section 11. Open Meetings. All meetings of the Board shall be open to all members, but members other than directors or officers may not participate in any discussion or deliberation unless expressly so authorized by the Board.

Section 12. Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 13. Action Without A Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by not less than a majority of the directors. Such a written consent shall be filed with the minutes of the Board of Directors.

Section 14. Telephonic Participation. One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all Persons participating in the meeting can hear each other at the same time, and those directors participating by telephone shall be deemed to be present at such meeting for quorum and other purposes. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board.

Section 15. Email Participation. Except in the case where a meeting is required for all members of the Board, the approval of such Board members may be obtained by written message or by email to vote on matters discussed prior to the meeting.

C. Powers and Duties.

Section 16. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the

Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the members.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparing and adopting an annual budget in which there shall be established the contribution of each Owner to the common expenses;

(b) making assessments to defray the common expenses, establishing the means and methods of collecting the assessments, and establishing the period of the installment payments of the annual assessment;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost;

(j) paying the cost of all services rendered to the Association or its members which are not directly chargeable to Owners;

(k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred; and

(l) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts,

condominiums, or other associations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 17. Borrowing. The board of Directors shall have the power to borrow money for any lawful purpose including, without limitation, repair or restoration of the Common Property and facilities, without the approval of the members of the Association. However, the Board shall obtain membership approval in the same manner as for special assessments (Article IV, Section 4 of the Declaration), in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, or the total amount of such borrowing exceeds or would exceed Twenty-Five Thousand (\$25,000). Dollars outstanding debt at any one time.

Section 18. Enforcement. The Board shall not impose a fine (a late fee shall not constitute a fine) or suspend an Owner's right to vote or to use the Common Properties (except for nonpayment of fees due the Association as provided in the Declaration and By-Laws) unless and until the following procedure is followed:

(a) Notice. If any provision of the Declaration or By-Laws or any rule or regulation of the Association is violated, the Board shall serve the violator with written notice sent certified mail, return receipt requested, which shall state (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a statement that the violator may challenge the fact of the occurrence of a violation, the proposed-sanction, or both; (iv) the name, address, and telephone number of a person to contact to challenge the proposed action; and (v) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of receipt of the notice. If a challenge is not made, the sanction shall be imposed ten (10) days from the date of the notice; provided, the Board may, in its discretion, waive any sanction if the violation is cured within such ten (10) day period. In the event of a continuing violation, each day the violation continues beyond the ten (10) day period constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(b) Hearing. If the alleged violator timely challenges the proposed action, a hearing before the Board of Directors shall be held in executive session affording the member a reasonable opportunity to be heard. The hearing shall be set at a reasonable time and date by the Board, and notice of the time, date (which shall be not less than ten (10) days from the giving of notice), and place of the hearing and an invitation to attend the hearing and produce any statements, evidence, and witnesses shall be sent to the alleged violator. Prior to the effectiveness of any sanction hereunder, proof of such notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer or director who delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. This Section shall be deemed complied with if a hearing is held and the violator attends and is provided an opportunity to be heard, notwithstanding the fact that the notice requirements contained herein are not technically followed.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through its Board of Directors, may elect to enforce any

provision of the Declaration, the By-Laws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section 17(b) of this Article. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

The Association or its duly authorized agent shall have the power to enter a Lot or upon any portion of the Common Property to abate or remove any structure, thing or condition which violates the Declaration, the By-Laws, or the rules and regulations. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Lot Owner and shall be collected as provided in Article IV of the Declaration for the collection of assessments.

Article IV

Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors at the first Board meeting subsequent to the Annual Meeting.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually for a one year term by the Board of Directors at the first meeting of the Board following each annual meeting of the members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever, in its judgment, the removal will serve the best interests of the Association.

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code.

Section 5. Vice President. The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the president when so acting.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with Georgia law and as stipulated by Article VI, Section 6.

Section 7. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors.

Section 8. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Article V

Committees

The Board of Directors is authorized to establish committees to perform those tasks and to serve for those periods that it designates. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Article VI

Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

Section 2. Parliamentary Rules. Roberts Rules of Order (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, these By-Laws, or a ruling made by the Person presiding over the proceeding.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Georgia law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Financial Review. A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board. However, after having received the Board's financial review at the annual meeting, the Owners may, by a Majority of the Association vote, require that the accounts of the Association be audited as a Common Expense by a certified public accountant.

Section 5. Amendment. These By-Laws may be amended unilaterally at any time and from time to time by the Association (a) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict; (b) if an amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; (c) if an amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable the lender or purchaser to make or purchase Mortgage loans on the Lots subject to the Declaration; or (d) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgage loans on the Lots subject to the Declaration. However, any such amendment shall not adversely affect the title to any Owner's Lot unless any Lot Owner consents to "the amendment in writing.

In addition to the above, these By-Laws may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least a Majority of the total Association vote. Amendments to these By-Laws shall become effective upon recordation, unless a later effective date is specified in the amendment.

Section 6. Books and Records.

(a) All members of the Association and any institutional holder of a first Mortgage shall be entitled to inspect the following records at a reasonable time and location specified by the Association, upon written request at least five (5) days before the date on which the member wishes to inspect and copy:

(i) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;

(ii) its By-Laws or restated By-Laws and all amendments to them currently in effect;

(iii) resolutions adopted by either its members or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(iv) resolutions adopted by either its members or Board of Directors relating to the characteristics, qualification, rights, limitations, and obligations of members or any class or category of members;

(v) the minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;

(vi) all written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;

(vii) a list of the names and business or home addresses of its current directors and officers; and

(viii) its most recent annual report delivered to the Secretary of State.

(b) A member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the member wishes to inspect and copy only if the member's demand is made in good faith and for a proper purpose that is reasonably relevant to the member's legitimate interest as a member; the member describes with reasonable particularity the purpose and the records the member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose:

(i) excerpts from minutes of any meeting of the Board of Directors, records of any action of a committee of the Board of Directors while acting in place of the Board of Directors on behalf of the Association, minutes of any meeting of the members, and records of action taken by the members or the Board of Directors without a meeting, to the extent not subject to inspection under subsection 6(a);

(ii) accounting records of the Association; and

(iii) the membership list only if for a purpose related to the member's interest as a member. Without the consent of the Board, a membership list or any part thereof may not be: used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the Association; used for any commercial purpose; or sold to or purchased by any person.

The Association may impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided to a Member.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Norman Downes Homes Association, Inc., a Georgia corporation;

That the foregoing By-Laws constitute the Amended and Restated By-Laws of said Association, as duly adopted by the Board of Directors and the members of the Association on the ___ day of _____, 20__.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this ___day of _____, 20_____

NORMAN DOWNES HOMES ASSOCIATION, INC.

_____ [SEAL]
Secretary