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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
ANDOVER ATHENS HOMEOWNERS ASSOCIATION, INC.**

This Declaration of Covenants, Conditions, and Restrictions for Andover Athens Homeowners Association, Inc. (“Declaration”) is made this [\_\_\_] day of April, 2025, by Keystone Custom Homes, LLC, a Georgia limited liability company (as further defined below, “Declarant”).

**BACKGROUND STATEMENT**

- a. Declarant is the owner of certain real property in Athens-Clarke County, Georgia, which is more particularly described in the plat of survey dated March 1, 2021 and legal description attached to this Declaration as Exhibit A (as further defined below, the “Property”).
- b. Declarant intends to develop the Property into a residential development to be known as Andover Athens (the “Development”). Declarant intends by the recording of this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of lots to be developed within the Development.
- c. By recording this Declaration, Declarant intends to provide flexible and reasonable procedures for the management of the Development and the operation of the Association (defined below) that will govern the Development under this Declaration. Declarant also desires to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property and any additional real property that is later subjected to this Declaration.
- d. Declarant has caused or will cause the Association to be formed as a nonprofit corporation to perform certain functions for the common good and general welfare of the owners within the Development.

**STATEMENT OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

Declarant declares that all the Property will be held, sold and conveyed subject to this Declaration. The covenants, conditions, and restrictions set forth in this Declaration will run with the Property, and will be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and will, subject to the limitations stated in this Declaration, inure to the benefit of each Owner (defined below) and each Owner’s successors and assigns to the benefit of the Association.

**ARTICLE I**

## DEFINITIONS

The following words, when used in this Declaration will have the following meanings:

1. "Assessments" means the Annual Assessment, the Initial Assessment, and Individual Assessments.
2. "Association" means Andover Athens Homeowners Association, Inc., a nonprofit, nonstock, membership corporation organized under the Georgia Nonprofit Corporation Code, its successors and assigns.
3. "Board" means the Board of Directors of the Association which, as defined by O.C.G.A. § 14-3-140(2), is the governing body of the Association.
4. "Bylaws" means the Bylaws of the Association.
5. "Commencement Date" means the date on which the first Lot is sold to a third-party other than Declarant.
6. "Common Property" means all real property (together with any and all improvements now or later located thereon) or rights in real property (e.g., easements) owned by the Association or to be transferred to the Association for the common use and enjoyment of the Owners or a Governmental Body for the purposes specified in this Declaration.
7. "Declarant" means Keystone Custom Homes, LLC, a Georgia limited liability company, and its successors in title and assigns, provided any such successors in title or assigns acquire, for the purpose of development or sale, all or any portion of the remaining undeveloped or unsold portions of the Property, and provided further, in the instrument or conveyance to any such successor in title or assign, such successor in title or assign is designated as the Declarant by the grantor of such conveyance, which grantor must be the Declarant at the time of such conveyance; provided further that, upon such designation of successor Declarant, all rights and obligations of the former Declarant under this Declaration will cease, it being understood that as to all of the Property, there will be only one person or legal entity entitled to exercise the rights and powers of Declarant at any one time.
8. "Declarant Control Period" means the time period commencing on the date this Declaration is publicly recorded and continuing through the date that is 15 days after the earliest of the following events:
  - A. The twentieth anniversary of the public filing of this Declaration;
  - B. The date on which all Lots intended by Declarant to be part of the Development have been conveyed by Declarant to Owners other than Declarant or any entity affiliated with Declarant, except for a transfer of all Lots held by Declarant to a third-party builder or developer for the purposes of developing the Lots or holding completed dwelling units for permitted rentals, provided

that Declarant assigns all of its rights under this Declaration to such third-party;  
or

- C. Declarant's surrenders its authority to appoint and remove directors and officers through an express amendment to this Declaration, executed and recorded by the Declarant.
9. "Development Rules" means the rules, policies, and procedures promulgated by the Board regarding the maintenance and use of Lots and uses of Common Property, so far as such rules, policies, and procedures are not inconsistent with any other provision of this Declaration.
  10. "Governmental Body" – means any municipality, county, state, or other governmental body, agency or authority, along with any quasipublic agency.
  11. "Lot" means any parcel of land shown upon a subdivision plat recorded in the Office of the Clerk of the Superior Court of Athens-Clarke County covering any portion of the Property, provided, however, that no portion of the Common Property will be considered a Lot except as provided in Article II. "Lot" includes any Structure situated upon the Lot intended for independent use and occupancy as a residence for a single family. The Lot and Structure will not become a residence until a certificate of occupancy will have been issued by the appropriate Governmental Body as a prerequisite to the occupancy of such residence and until the Lot and Structure located thereon will have been conveyed to a third party other than the builder thereof.
  12. "Membership" - means the Owners, collectively.
  13. "Mortgagee" – means the holder or governmental guarantor of a deed to secure debt (or similar security instrument) against any Lot.
  14. "Occupant" - means any person lawfully occupying all or any portion of a Lot located within the Development for any period of time, regardless of whether such Person is a tenant or the Owner of such property.
  15. "Owner" - means the record owner (including Declarant), whether one or more persons or entities, of a fee simple title to any Lot, but where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full will be considered the Owner.
  16. "Person" – means a natural person or legal entity of any description, including but not limited to corporations, LLC's, partnerships, and trusts.
  17. "Property" - means the real property described in Exhibit A along with such additional real property as may be subjected to the provisions of this Declaration under the provisions of Article X below.

18. "Restrictions" - means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.
19. "Right of Abatement" - means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach, or other condition which may exist on the Lot contrary to the provisions of this Declaration, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and accordance with the provisions of this Article, and with the cost thereof including the costs of collection including reasonable attorneys' fees, together with interest at the lower of the highest rate permitted by Law or 18% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable under this Declaration. Such lien will be superior to any and all charges, liens or encumbrances which may in any manner arise to be imposed on the Lot after such entry whether arising from or imposed on the Lot after such entry whether arising from or imposed by judgment, decree, or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by this Declaration, and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair, or alteration of Structures.
20. "Short-term Rentals" - means an accommodation for transient guests where, in exchange for compensation of any type or amount, a residential unit is rented or otherwise provided for lodging for any period less than 31 consecutive days. Including but not limited to rentals on accommodations services such as Airbnb.com, Booking.com, Hometogo.com, and vrbo.com.
21. "Structure" means:
- A. Any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, fence, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvements to such Lot;
  - B. Any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot.

Capitalized terms used but not defined in this Article I will have the definitions given to those terms in this Declaration wherever they are defined.

## ARTICLE II COMMON PROPERTY

### 1. Conveyance of Common Property

- A. Declarant may from time to time convey Common Property to the Association or to a Governmental Body for the benefit of the Development or general public. The Association will accept from Declarant all such conveyances of Common Property.
- B. Declarant may, at its sole and absolute discretion, modify, alter, increase, reduce and otherwise change the Common Property to be conveyed at any time before conveyance.
- C. In addition to Common Property, Declarant may convey to the Association such other real and personal property as Declarant may determine to be necessary or proper for the completion of the Development and the Association will accept such conveyance.
- D. Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property will be reserved to the Declarant until such Common Property is conveyed to the Association or a Governmental Body.
- E. Once Declarant has conveyed Common Property to the Association, the Association will thereafter be responsible for all ad valorem and other taxes assessed against any such Common Property.

**2. Right of Enjoyment.** Every Occupant will, to the extent designated by an Owner, have a right and easement to use and enjoy the Common Property, which right will be appurtenant to and will pass with the title to every Lot upon transfer, except that no Occupant will do any act which interferes with the free use and enjoyment of the Common Property by any other Occupant. The Association may permit persons who are not Occupants to use and enjoy part or all the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted under this Declaration.

**3. Rights of Declarant and the Association as to Common Property.** As to any Common Property contributed to the Association or to be contributed by Declarant, Declarant (before the transfer of the Common Property) and the Association (after the transfer of the Common Property) will have the right to:

- A. Promulgate rules and regulations relating to the use, operation and maintenance of the Common Property; borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof, encumber any or all of the Association's property including Common Property and revenues from assessments, user fees and other sources; provided, however, that, during Declarant Control Period,

the Association will not deed, grant or convey to anyone any mortgage, deed to secure debt or other security interest on or in Common Property constituting real estate without Declarant's approval;

- B. Grant easements or rights of way over Common Property to the Association, any Owner, utility, or Governmental Body;
- C. Dedicate or transfer all or any part of the Common Property or interests therein to any Governmental Body for such purposes and subject to such provisions and conditions as may be agreed upon by such grantee, including a provision that such property or interest will cease to be subject to this Declaration or all or any part of the Restrictions while held by any such Governmental Body. Outside of the Declarant Control Period, any dedication or transfer under this provision must be approved by a two-thirds vote of the Owners who are present in person or by proxy and voting at a meeting of Owners duly held in accordance with the Bylaws of the Association;
- D. Charge reasonable fees in connection with the admission to and use of facilities or services by Occupants and nonOwners; provided that in setting any such fee the Board may establish reasonable classifications which will be uniform within each such class but need not be uniform between such classes;
- E. Suspend the voting rights of any Owner and the right of enjoyment granted or permitted under this Declaration;
- F. Sell, lease or otherwise convey all or any part the Common Property;
- G. Enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof; and
- H. Maintain all landscaping treatments previously installed by the Declarant, only if such landscaping is not otherwise maintained by the appropriate county entity with jurisdiction over the roads and streets for Athens-Clarke County, Georgia.

**4. Conveyance of Common Property by Declarant to Association:** The Declarant may transfer or convey to the Association any personal property and any improved or unimproved property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance will be accepted by the Association, and the property will thereafter be Common Property to be maintained by the Association for the benefit of all its Owners and Occupants.

**5. Types of Common Property:** At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant will designate in the deed of conveyance or easement that such real property is to be Common Property. Declarant further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used. In such event, such real property or portion thereof will not,

without a two-thirds vote of the Owners, be used for any different purpose or purposes without the prior written consent of the Declarant.

6. **Delegation of Use:** Any Owner may delegate to the Occupants of the Owner's Lot other than the Owner the right to use and enjoy the Common Property. An Owner who is not an Occupant will not have the right to use or enjoy Common Property.

7. **Maintenance and Repair:** Except as otherwise specifically provided in this Declaration, the Association will have the responsibility to maintain, repair and replace all portions of the Common Property. This maintenance will include, without limitation, maintenance, repair and replacement (subject to any insurance then in effect) of all landscaping, streetlight systems, and other improvements situated on the Common Property. In addition, the Association will maintain grass, entrance-ways and other landscaping located along or in dedicated rights of way which were installed and maintained by Declarant, to the extent permitted by the applicable Governmental Body. The Association will maintain all paved areas such as roads, retaining walls, sidewalks, and driveways which were installed by Declarant that are not otherwise maintained by the appropriate Governmental Body. The foregoing maintenance will be performed consistent with the Development Rules.

- A. The Association will also have the right, but not the obligation to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Property and to enter easements and covenants to share cost agreements regarding such property where the Board has determined that this would benefit Owners.
- B. The Association will be not be liable for injury or damage to a person or property caused by the elements or by any Owner, or by any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property or from any pipe, drain, conduit, appliance or equipment, that the Association is responsible for the maintenance of. The Association will also not be liable to any Owner for loss or damage, by theft or otherwise, of any property which may be stored in or upon any part of the Common Property. No diminution or abatement of assessments will be claimed or allowed because of any alleged failure of the Association to take some action or perform such function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from making repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or with any order or directive of any Governmental Body.

8. **Conservation Easement.** Notwithstanding anything in this Declaration to the contrary, Declarant reserves the right to grant, convey, transfer, gift, sell, or assign any part or portion of the Property owned by Declarant to a qualified land conservation organization for purposes of greenspace preservation or conservation easement purposes.

**ARTICLE III  
THE ASSOCIATION AND GOVERNANCE**

**1. Purposes, Powers, and Duties of the Association.** The Association will be formed as a nonprofit corporation under the Georgia Nonprofit Corporation Code for the sole purpose of performing certain functions for the common good and general welfare of the Owners and Occupants. The Association will have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the Owners and Occupants. To the extent, and only to the extent, necessary to carry out such purpose, the Association:

- A. Will have all the powers of a corporation organized under the Georgia Nonprofit Corporation Code; and
- B. Will have the power and duty to exercise all the rights, powers and privileges and to perform all the duties and obligations of the Association required by this Declaration.

**2. Voting Rights**

For purposes of voting, there will be two classes of Owners:

- A. **Class A Owners.** Each Owner except for Declarant will be a Class A Owner and will be entitled to one Class A vote, subject to the following limitations: Where more than one person is the Owner of a Lot, voting rights as to that Lot will be exercised only by one person as will be designated in a proxy instrument duly executed by all Owners of the Lot and delivered to the secretary of the Association. The Association may accept the vote of one Owner per Lot at any meeting of the Association even if such proxy instrument is not provided to the Association. If more than one person holds title to a Lot, the ownerships will be shared in the same proportion as the title, but there will be only one ownership and one vote per Lot. When more than one person owns a Lot, the vote for such Lot will be exercised as they determine between or among themselves. In no event will more than one vote be cast with respect to any Lot. If only one co-Owner or only an Owner's spouse attempts to cast the vote for a Lot, it will be conclusively presumed that such vote is authorized for the Lot. If the co-Owners or an Owner and his or her spouse disagree about how to cast the Lot's vote, and two or more of them attempt to cast the Lot's vote, such vote will not be counted. Ownership does not include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest will not terminate the Owner's ownerships. Ownership will be appurtenant to the Lot and will be transferred automatically by the Lot's conveyance. Ownership may be transferred only in connection with the Lot's transfer. Notwithstanding any provision of this Declaration, the Bylaws, or any other instrument relating to the Association to the contrary, in no event will more than one Class A vote be cast per Lot.
- B. **Class B Owners.** Declarant will be the sole Class B Owner and will be entitled to three votes for each Lot it owns, provided, however, in no event will the Class B Owner have

less than the total number of Class A votes (with no more than one vote per Lot) plus one. The Declarant's Class B Owner status will cease and be converted to Class A Owner status at the end of the Declarant Control Period.

**3. Board of Directors.** The affairs of the Association will be managed by its Board. Board composition will be determined as follows:

- A. During the Declarant Control Period: (i) the Board will consist of either three or five directors at Declarant's election; (ii) Declarant will have the exclusive right to appoint, remove, and replace all Directors at any time in its sole and absolute discretion; (iii) assuming there is a sufficient number of Owners besides Declarant to serve, as to a three-person Board, at least one director will be an Owner besides Declarant and, as to a five-person Board, at least two directors will be Owners besides Declarant. Any natural person will be qualified to serve as a Director regardless of whether he or she is an Owner.
- B. After the Declarant Control Period, all the Board seats will be elected by the Owners as set forth in the Association's Bylaws.
- C. The Board may hire service providers including but not limited to a property management company or tax preparation service to assist with any or all its duties and obligations under this Declaration and may pay such providers out of the Association's funds.

**4. Suspension of Owner's Rights.** The Board may suspend the voting rights and right of enjoyment of the Common Property of any Owner (including the Owner's designated Occupants) who:

- A. Is subject to the Right of Abatement, as defined in this Declaration because the Owner failed to take the reasonable steps to remedy a violation or breach of the Restrictions within thirty days after receiving notice of the same under this Declaration;
- B. Is delinquent in the payment of any amount levied by the Association against the Owner or the Owner's Lot under this Declaration; or
- C. Is in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property. Such suspension will be for the balance of the period in which the Owner is in violation, breach or default, the suspension may be for a period not to exceed sixty days after the cure or termination of such violation. No such suspension will prevent an Owner's ingress to or egress from his Lot.

**5. Termination of Owner's Rights.** A person's rights as an Owner automatically terminates once the person is no longer an Owner.

**6. Voting Procedures.** The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the Association will be governed by this Declaration, the Bylaws, the Association's Articles of Incorporation, and the Georgia Nonprofit Corporation Code, in that order of priority and as each will from time to time be in force and effect.

**7. Control by Declarant**

- B. Notwithstanding any other language or provision to the contrary in this Declaration, the Articles of Incorporation, or the Bylaws of the Association, Declarant will have the right to appoint and remove any members of the Board and any officer of the Association until the termination of the Declarant Control Period.
- C. So long as Declarant is in compliance with its obligations under this Declaration and provided that the Declarant Control Period has not terminated under Article I, Section 7 (definition of Declarant Control Period), subparts B or C, Declarant has the right to and may extend the Declarant Control Period for two consecutive periods of five years each (i.e., a total extension of ten years). Any such extensions will be executed through a filed amendment to this Declaration filed prior to the expiration of the Declarant Control Period.
- D. Upon termination of the Declarant Control Period: (i) the number of Directors will automatically be set at five; (ii) two Directors will be elected by the Owners, and (iii) if the Board had five members prior to the expiration of the Declarant Control Period, the newly elected Directors will replace sitting Directors designated by Declarant. On the first anniversary of the termination of the Declarant Control Period, a third Director will be elected by the Owners, and will replace one of the three remaining Directors to be designated by Declarant. On the second anniversary of the termination of the Declarant Control Period, the remaining to Declarant-appointed Directors will be subject to replacement by substitute Directors elected by the Owners. Upon termination of the Declarant Control Period, Declarant will deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association in its possession during the Declarant Control Period.

**8. Payment of Assessments and Creation of Lien and Personal Obligation.**

Each Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, regardless of whether this Declaration is referenced in any such deed, covenants and agrees as follows:

- A. To pay to the Association all Assessments which may or will be levied by the Association under this Declaration against the Lot;
- B. That the Association will have a continuing charge and lien against the Lot to secure payment of all Assessments and charges of any description against the Lot, along with

interest as provided in this Declaration and costs of collection including reasonable attorneys' fees;

- C. That the Association's continuing charge and lien on the Lot binds the Lot in the hands of the Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien are superior to any and all charges, liens or encumbrances which may later in any manner arise or be imposed on such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except
  - i. Such liens for taxes or other public charges as are by applicable law made superior, and
  - ii. All deeds to secure debt given to secure a loan the proceeds of which are used (1) to buy the Lot (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.
- D. That no sale or transfer at foreclosure or in lieu of foreclosure will relieve the Lot from liability for any charge against the Lot that became payable prior to the transfer;
- E. That, without limiting any other provision of this Declaration, all amounts assessed against the Lot under this Declaration will be a personal obligation of the Owner that will survive any sale or transfer of the Lot; provided, however that such personal obligation for delinquent Assessments will not pass to an Owner's successor in title unless expressly assumed by such successor.

9. **Purpose of Assessment.** The Assessments levied by the Association will be used exclusively for the purpose of providing for the common good and general welfare of the Development per the terms of this Declaration, including, but not limited to, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

10. **Accumulation of Funds Permitted.** The Association will not have to spend in any calendar year all the sums collected in such year by way of Assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor will the Association be obligated to apply such surplus to the reduction of the amount of the Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

11. **Assessments.**

- A. **Annual Assessment.** The Association will be entitled to assess an “Annual Assessment” against each Lot for the purpose promoting the recreation, health, safety, welfare, and common benefit of the Owners and for the maintenance, repair, replacement, and improvement of the Common Property and any other areas the Association is obligated to maintain and the establishment and maintenance of reasonable reserves for capital repairs and replacement. The amount of the Annual Assessment will be determined by the Board in accordance with the Association’s adopted budget and will be allocated equally among all Lots, unless otherwise provided in this Declaration. The Annual Assessment as to each Lot will be paid by the Owner in equal monthly installments and will not bear interests so long as all installments are paid timely.
- B. **Initial Assessment.** Upon the transfer of the entire fee simple interest in each Lot, the transferee will pay an “Initial Assessment” in the amount of \$500.00 to defray administrative costs of setting up each Owner’s account. Such assessment will be due and collectable from the person or persons purchasing a Lot at the closing on such Lot. The Board will be entitled to increase the amount of this Initial Assessment annually at a rate not to exceed the Consumer Price Index for All Urban Consumers
- C. **Special Assessments.** In addition to the Annual Assessments and Initial Assessments authorized by this Declaration, the Association may levy, in any Assessment Year, “Special Assessments” for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of capital improvements on the Common Property. Such Special Assessments may be levied by the Board in any Assessment Year without the approval of the Owners, as many times as the Board deems necessary, so long as the Special Assessments in the aggregate do not exceed two times the amount of the Annual Assessment then in effect. Special Assessments exceeding said amount will require the approval of two-thirds of the Owners who are present in person or by proxy at a meeting of Owners duly held in accordance with the provisions of the Bylaws of the Association and this Declaration. Notwithstanding any provision of this Declaration, the Bylaws, or any other instrument governing the Association to the contrary, during the Declarant Control Period, no Special Assessment will be assessed without the Declarant’s approval.
- D. **Individual Assessments.** Any damage expense incurred by the Association that is caused by the conduct of an Owner (including the Owner’s guests or the Occupants of the Owner’s Lot) or unique expenses incurred by the Association with respect to a Lot that are not common to all Lots in the Development will be specifically assessed against the Owner and the Owner’s Lot (each an “Individual Assessment”). Each Individual Assessment will be levied by the Board and the amount and due date of such Individual Assessment will be as specified by the Board.

12. **Assessment Procedures.** The Board will establish the annual assessment for each “Assessment Year” (which will be the calendar year unless the Board determinates otherwise) at an amount not in excess of the maximum annual assessment as determined by the provisions of this Declaration and will also establish the date during the Assessment Year on which the annual assessment will be due and payable (the “Due Date”). The Board will also establish an annual budget which will include the estimated operating expenses and an amount to be set aside for the Assessment Year into a reserve allowance to be used for future repair and replacement of the Common Property; provided, however, in no event will the Board have to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that portion of such costs will be covered by Special Assessment. The Board will cause the Association to send to each Owner at least thirty days before the Due Date written notice setting forth the amount of the Annual Assessment and the Due Date. The Annual Assessment will be due and payable on the thirtieth day following such written notice or the Due Date, whichever is later. In the event that the Board fails for any reason to fix the Annual Assessment for any Assessment Year, then the Annual Assessment in effect for the previous year will continue. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board will also establish payment procedures for payment of any Special assessments for Capital improvements which may be levied in accordance with the provisions of this Declaration.

13. **Uniform Rate of Assessment.** Both Annual Assessments and Special Assessments will be fixed at a uniform rate for all Lots.

14. **Contributions and Advances By Declarant.** During the Declarant Control Period, Declarant will not be liable for the payment of any Assessments, provided that Declarant will advance funds to the Association sufficient to satisfy any deficit between actual incurred operating expenses of the Association (excluding the allocation of the reserve allowance), and the sum of Assessments collected by the Association in any Assessment Year. Any advances made by Declarant will be evidenced by promissory notes from the Association to Declarant with a repayment term not to exceed five years and a rate of interest not to exceed the Wall Street Journal prime rate. Without limiting any other right of Declarant under this Declaration, Declarant has the right to lend to and the Association has the right to borrow from Declarant funds necessary for the repair or maintenance of the Common Property or any commonly used facilities. Declarant is entitled to reimbursement from the Association for any funds expended for the maintenance or repair of the Property, including but not limited to lights, stormwater retention, green spaces, landscaping of the common areas, commonly used facilities, utilities, and any similar expenditures.

15. **Effect of Nonpayment of Assessments.** Any Assessment which is not paid on or before the Due Date will bear interest after the Due Date at the rate of 18% per annum, or at such lower rate as the Board may from time to time establish, provided, however, that in no event will the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event an Owner defaults or more installments of an Assessment, the Board may declare any remaining balance of the Assessment at once due and payable. In the event that an Owner fails to pay fully any portion of any Assessment before payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection of such Owner, will be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration. To the extent any Owner is in arrears of any description, including late fees and interest, to the Association, all payments received from such Owner will be first applied to the obligations that are in arrears and will not be applied to current obligations until such arrearage is resolved.

16. **Certificate of Payment.** Upon written demand by an Owner, the Association will within a reasonable period of time issue and furnish to such Owner a written certificate stating that all Assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all Assessments (including penalties, interests, and costs) have not been paid and setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as provided in this Declaration, will be conclusive and binding regarding any matter in this Declaration stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

17. **Landscaping in the Development.** The Association has the right, but not the obligation to provide basic landscaping services on the Lots at any time and to assess the Owners for such maintenance and landscaping through Annual Assessments or otherwise.

## **ARTICLE V ARCHITECTURAL CONTROL**

### **1. Architectural Control Committee – Creation and Composition**

- A. An Architectural Control Committee (the "ACC") will be established consisting of three individuals, who need not be Owners. During the Declarant Control Period, Declarant will have the right, but not the obligation, to appoint all members of the ACC. After the Declarant Control Period expires, the Board will have the appoint members of the ACC. The ACC's operating costs may be covered by the Association in the Board's discretion.
- B. Each member of the ACC will be appointed for a calendar year term. If a vacancy occurs on the ACC because of death, incapacity, resignation, removal or otherwise, the remaining ACC members will continue to act and such vacancy is filled by the Declarant (during the Declarant Control Period) or the Board (after the Declarant Control Period), which will

occur at the earliest practicable time. Any ACC member may resign at any time by giving notice of such resignation to the Chairman of the ACC. Any member of the ACC may be removed at any time with or without cause by the Declarant (during the Declarant Control Period) or the Board (after the Declarant Control Period).

2. **Purpose. Powers and Duties of the ACC.** The purpose of the ACC is to ensure that any installation, construction or alteration of any Structure on any Lot will be submitted to the ACC for approval:

- A. As to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development Rules, as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures; and
- B. To ensure that all plans for construction are in conformity with the Development-Wide standards imposed by any Government Body. To the extent necessary to carry out such purpose, the ACC will have all of the powers and duties to do each and everything necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

3. **Officers, Subcommittees, and Compensation.** The members of the ACC will appoint a chairman from themselves and may appoint from other officers and subcommittees of members of the ACC at their discretion. The ACC members will be reimbursed by the Association for expenses and other reasonable outofpocket costs incurred in the performance of their duties as ACC members.

4. **Submission of Plans and Specifications.** No Structure will be commenced, erected, placed, moved onto, or permitted to remain on any Lot nor will any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications will have been submitted to and approved in writing by the ACC. The ACC will prescribe the form in which plans and specifications are submitted for approval.

5. **Approval of Plans and Specifications.** Upon the ACC's approval of any plans and specifications submitted under this Declaration, a copy of such plans and specifications, as approved, will be maintained by the ACC. Approval for use in connection with any Lot or Structure of any plans and specifications will not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements including if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, will be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, if the applicant has adhered to and complied with the approved plans and specifications and any conditions attached to any approval.

6. **Disapproval of Plans and Specifications.** The ACC will have the right to disapprove any plans and specifications submitted under this Declaration because of any of the following:

- A. The failure to include information in such plans and specifications as may have been reasonably requested;
- B. The failure of such plans or specifications to comply with this Declaration; and
- C. Any other matter which, in the judgment of the ACC, would likely cause the proposed installation, construction or alteration of a Structure to:
  - i. Fail to be in conformity and harmony of external design and general quality with the standards under the Development Rules;
  - ii. Be located in a place that is incompatible with topography, finished ground elevation, and surrounding Structures;
  - iii. To result in a material negative impact .
- D. If the ACC will disapprove any plans and specifications submitted or will approve the same only as modified or upon specified conditions, such disapproval or qualified approval will be accompanied by a statement of the grounds on which such action was based. Upon request, the ACC will make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

7. **Obligation to Act.** The ACC will act on any properly submitted plans and specifications within 30 days after its receipt. If approval is granted or approved with conditions, the ACC's approval and any conditions imposed by the ACC, will be placed in writing on the plans and specifications and will be returned to the applicant. Failure by ACC to act within 30 days of receipt of plans and specifications submitted for approval will be deemed approval of such plans and specifications.

8. **Inspection Rights.** Any member of the ACC or its designees may, after reasonable notice, at any reasonable time or times enter upon any Lot and Structure for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and no such inspection will constitute a trespass provided that it is carried out in accordance with the terms of this Article.

9. **Violations.** If any Structure is erected, placed, maintained, or altered upon any Lot without approval or inconsistent with the plans and specifications approved by the ACC, such erection, placement, maintenance or alteration will be deemed to have been undertaken in violation of this Declaration and without the required approval. Upon the ACC's determination that a violation has occurred, the ACC must notify the Board. The Board will take appropriate measures to correct the violation by providing, via certified mail or overnight commercial delivery, written notice to the Owner. This notice must include, in reasonable detail, the nature of the violation and the specific actions required to remedy the violation. If the Owner does not take reasonable steps toward the required remedial action within 30 days after the notice's mailing and complete such remedial action within 60 days after the notice's mailing, then the Association will have the Right of Abatement as provided under this Declaration.

10. **Disclaimer as to ACC Approval.** The Declarant, the ACC, its members, and the Association assume no liability or responsibility related to approved plans and specifications, including but not limited to responsibility for any defect in any structure constructed from such plans and specifications. The approval of any plans and specifications do not involve a review of engineering or structural design or quality of materials intended to be used. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them will be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans and specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the ACC, the Board, or the officers, directors, members, employees and agents of any of them to recover any such damages and every person releases, remises, quitclaims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and every person waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known when the release is given.

## **ARTICLE VI GENERAL COVENANTS AND RESTRICTIONS**

1. **Application.** The covenants and restrictions contained in this Article will pertain and apply to all Lots and Structures.

2. **Restriction of Use.** Lots may be used for single family residences only and for no other purposes, provided that Declarant will be entitled to maintain and operate signs, a sales office, a business office, and model homes on the Property, together with such other facilities as, in the opinion of Declarant, may be reasonably required or convenient to the construction, completion, development, or sale of the Lots so long as Declarant owns any Lot for sale. No dwelling will be constructed, erected, placed, altered or maintained on any Lot consisting of less than 900 square feet of heated floor space. No Structure will contain any exterior vinyl building materials. Only brick, stone, fiber cement materials, or other material approved by the ACC will be permitted as the exterior finish of a Structure. No Structure will have concrete blocks as exposed finish material, however concrete blocks may be used only as foundations or for basements and must not be part of a visible exterior of a Structure above ground level. Nothing contained in this Declaration will be construed to prohibit the condominium form of development and ownership of residences within the development.

3. **Resubdivision of Property.** No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC and the Board of plans and specifications for such split, division, or subdivision. Nothing contained in this Declaration will prohibit the condominium form of development and ownership of residences within the development.

4. **Erosion Control.** No activity which may create erosion or siltation problems will be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications, require the use of certain means and methods of preventing and controlling such erosion or siltation consistent with current best practices. Such means may include (by way of example and not of limitation) physical devices for controlling the runoff and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping under this Declaration

5. **Landscaping.** No construction or alteration of any Structure will take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Development Guidelines of the ACC which will include, without limitation, sodded grass front yards with an underground irrigation system.

6. **Temporary Buildings.** No temporary building, trailer, garage or building under construction will be used, temporarily or permanently, as a residence on any Lot. No contractor or builder will erect on any Lot any temporary building or shed for use in connection with construction on such Lot.

## 7. Signs.

- A. No signs whatsoever (including but not limited to commercial and similar signs) will, without the ACC's prior written approval of plans and specifications therefore, be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:
- i. Such signs as may be required by legal proceedings;
  - ii. Not more than one "For Sale" or "For Rent" sign as to each Lot provided that such sign may only be displayed in a window of such Lot and will be subject to any rules and regulations of the Association adopted with respect thereto; and, provided, further that if, at the time of any desired use of such sign, the Association is making signs available for the use of Owners, the signs made available the by Association must be used;
  - iii. Directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC; and
- B. The ACC has the right to approve the location, color, size, design, lettering, and all other particulars of signs, property identification markers, of receptacles for the receipt of mail, or similarly delivered materials.

8. **Fences.** No fence or wall of any kind will be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. There will be no fences in the front yard and the ACC may dictate the design and material of all fencing visible from the street. Fence material will be subject to approval by the ACC and will be of a type that is consistent with the character of the Development.

9. **Antennae. Etc.** No exterior television, radio antennae, satellite dish, receiver, or solar equipment of any sort will be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval by the ACC. No antennae will be installed or used for the purpose of the transmitting of electronic signals.

10. **Clotheslines. Solar Equipment. Garbage Cans. Etc.** All clotheslines, equipment, garbage cans, woodpiles, and solar equipment will be kept screened by adequate planting or fencing to conceal them from view by neighboring residences and streets and may be maintained in the rear yard on a Lot only.

11. **Maintenance.** Each Owner will keep and maintain each Lot and Structure owned by him, in good condition and repair, including but not limited to the repairing, painting, pressure washing, gutter cleaning, and other appropriate external care of all Structures. If in the opinion of the ACC, any Owner fails to perform the duties imposed by this Article, the ACC will notify the Association. If the Board will agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this

Article, then the Board will give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner will fail to take reasonable steps to remedy the condition within thirty days after the mailing of said written notice by certified mail, the Association has the Right to Abatement under this Declaration.

12. **Commercial and Recreational Vehicles and Trailers.** No commercial vehicle, house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat, boat trailer, or like equipment will be permitted on any Lot permanently but will be allowed on a temporary basis not to exceed fortyeight consecutive hours. However, any such vehicles or equipment may be stored on a Lot, if such vehicle or equipment is kept in an enclosed permanent Structure and is concealed from view by neighboring residences and streets.

13. **NonDiscrimination.** No Owner or person authorized to act for an Owner will refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of or otherwise made unavailable or deny the purchase or rental of any Lot to any persons because of race, color, religion, sex, age or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant will run with the land and will remain in effect without any limitation in time.

14. **Livestock and Poultry.** No animals, livestock, or poultry of any kind will be raised, bred, or kept on any lot, except that dogs, cats, or other household pets may be kept in compliance with applicable laws, provided they are not kept, bred, or maintained for any commercial purposes.

**15. Solid Waste.**

- A. No person will dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.
- B. Except during approved construction and as approved by the appropriate Governmental Body, no person will burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.
- C. Except for building materials employed during construction of any Structure approved by the ACC, no lumber, metals, bulk materials, or solid waste of any kind will be kept, stored, or allowed to accumulate on any Lot unless screened.
- D. If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pickup is to be made, in order to provide access to persons making such pickup. At all other times such containers will be screened or enclosed in a manner set forth by the Association. Guidelines relating to the type of containers permitted, the manner of storage and the place of pickup may also be established by the Association.

16. **Nuisances.** Noxious or offensive activity is prohibited on any Lot. Nothing that may be or may become any annoyance or nuisance to the community.

17. **Rules and Regulations.** Reasonable rules and regulations concerning the use of the Lots and the conduct of Occupants at the Development may be adopted, promulgated, revoked, made, and amended from time to time by the Board. Copies of such rules and regulations and amendments will be furnished by the Board to all Owners. Such rules and regulations will be binding on the Owners and Occupants until and unless any such rule or regulation is specifically overruled and cancelled in a regular or special meeting of the Association by the vote of Owners holding a majority of the total votes in the Association. Under this Declaration, the Association may impose reasonable fines for violations of any such rules and regulations as are determined by the Board.

18. **Short-term rentals.** No Lot may be used for Short-term Rentals, nor may any Owner or occupant lease, license, or otherwise permit their Lot for transient accommodations in exchange for compensation for any period less than 31 days regardless of how the arrangement is described.

19. **Occupancy Limit.** No Lot may be occupied by more than two adult Occupants per bedroom within the Structure located on that Lot.

## **ARTICLE VII EASEMENTS. ZONING AND OTHER RESTRICTIONS**

### **1. Easements.**

- A. Declarant expressly reserves to Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over, and under any part of the Property owned by Declarant or the Common Property for any purpose which Declarant deems necessary, including, as an example, and not limitation, the following:
- i. the erection, installation, construction, and maintenance of wires, lines, conduits, poles, and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television cables, other utilities, and similar facilities;
  - ii. the erection, installation, construction, and maintenance of stormwater drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service, or function;
  - iii. slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow; and

- iv. the planting or replanting of hedges, shrubbery, bushes, trees, flowers, and plants of any nature.
- B. No Owner will have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.

2. **Easement Area.** The words “Easement Area” as used in this Declaration will mean those areas on any Lot or any other portion of the Property with respect to which easements are shown on a recorded deed, easement agreement or on any filed or recorded map or plat relating thereto.

3. **Entry.** Declarant and its employees and representatives, and contractors will have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Article. Declarant will be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area under this Declaration.

4. **Zoning and Private Restrictions.** None of the covenants, restrictions, or easements created or imposed by this Declaration will be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules, or regulations of any Governmental Body. In the event of any conflict between such laws, rules, or regulations, covenants, restrictions, and easements created or imposed by Declaration, the most restrictive provision will govern and control.

## **ARTICLE VIII ENFORCEMENT**

1. **Right of Enforcement.** This Declaration and the Restrictions contained in it will inure to the benefit of and will be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association, and (iii) each Owner, his legal representatives, heirs, successors, and assigns.

2. **Right of Abatement.** Except where different notice provisions are provided in this Declaration, in the event of a violation or breach of any Restriction contained in this Declaration, the Association will give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner fails to take reasonable steps to remedy such violation or breach within thirty days after the mailing of said written notice, then the Association will have the Right of Abatement.

3. **Specific Performance.** Nothing contained in this Declaration will be deemed to affect or limit the rights of the Declarant, the Association, or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. But because it may be impossible to measure accurately in money the damages which will accrue to a beneficiary of this Declaration, its transferees, successors, or assigns, by reason of a violation of, or failure to perform any of the obligations provided by this Declaration; and therefore, any beneficiary of this Declaration will be entitled to relief by way of injunction, or specific performance, as well as any other relief available by law or in equity, to enforce the provisions of this Declaration.

4. **Collection of Assessments and Enforcement of Lien.**

- A. If any Assessment, interest, cost, or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, to collect such assessment, cost or charge, plus any interest and costs of collection, including reasonable attorneys' fees, which will be recoverable in any such action.
- B. As an additional remedy, but in no way as limitation on the remedies, if any assessment, interest, cost, or other charge is not paid as required by this Declaration, each Owner grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Court House in Athens-Clarke County, Georgia to the highest bidder for cash, after advertising the time, terms, and place of such sale once a week for four weeks immediately preceding such sale (but regardless of the number of days) in the paper in which the Sheriffs advertisements for Athens-Clarke County, Georgia are published, all other notice is waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale a conveyance of said property in fee simple, which conveyance will contain recitals as to the happenings of the default upon which the execution of the power of sale in this Declaration granted depends, and each Owner constitutes and appoints the Association and its assigns, the agent and attorney in fact of each Owner to make such recitals, and covenants and agrees that the recitals so to be made by the Association, or assigns, will be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators, and assigns of such Owner, and that the conveyance to be made by the Association or assigns, will be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or assigns will collect the proceeds of such sale, and after reserving the entire amount of assessment, interest, cost, or other charge due, together with all costs and expenses of sale and fifteen per centum of the total amount due for attorneys' fees, will pay any excess to such Owner, or to the heirs, or assigns of such Owner as provided by law. The power and agency granted within this Declaration are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

C. **WAIVER.** EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR LAWS OF THE STATE OF GEORGIA OR OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

5. **No Waiver.** The failure of Declarant or the Association to enforce any Restrictions in this Declaration contained will in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

## **ARTICLE IX AMENDMENT**

### **1. Amendments by Declarant.**

- A. During the Declarant Control Period, Declarant may amend this Declaration by an instrument recorded in the deed records of the Superior Court of Athens-Clarke County, Georgia, which amendment may be filed without the approval of the Owners so long as the amendment does not:
- i. Materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Property as allowed under this Declaration; or
  - ii. Have a material adverse effect on the security title and interest of any mortgagee.
- B. Any amendment to the Declaration that materially alters or changes any Owner's rights as described above is only valid if a majority of the current Owners affected by the amendment provide their written consent to the amendment. Any amendment made under this provision will be certified by the Declarant as being duly approved by the Declarant and a majority of Owners.
- C. Any Amendment to the Declaration that would have a material adverse effect on the security title and interest of any mortgage as described above is only valid if the affected mortgagees provide written consent to the amendment. Any amendment made under this provision will be certified by the Declarant as being duly approved by the Declarant the mortgagees.

- D. Any amendment to the Declaration made under this Section will be effective only upon recordation or a later date specified in the amendment.
- E. Each Owner, by acceptance of a deed or other conveyance of a Lot, agrees to be bound by any validly adopted amendments to the Declaration and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment to the Declaration or any other instruments relating to the Development if such amendment is:
- i. Necessary to bring any provision of this Declaration into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which will conflict with this Declaration;
  - ii. Necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration;
  - iii. Required by an institutional or governmental lender, purchaser, or guarantor of mortgage loans to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration;
  - iv. Necessary to enable any governmental agency or reputable private insurance company to insure mortgage loan on the Lots subject to this Declaration, or;
  - v. Necessary to correct a scrivener's error in the drafting of this Declaration.

2. **Amendments by Association.** Amendments to this Declaration after the termination of the Declarant Control Period, will be proposed and adopted in the following manner:

- A. Notice of the proposed amendment's subject matter will be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and will be delivered to each Owner.
- B. At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Owners of the Association consistent with the Bylaws. Such amendment must be approved by Owners holding at least three-fourths of the total votes in the Association provided, however that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee.
- C. The agreement of the required percentage of the Owners and, where required any mortgagee, to any amendments of this Declaration will be evidenced by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and the Secretary of the Association incorporated in the amendment executed by the Association, which sworn statement will state that the Agreement of the required parties was lawfully obtained. Any amendment of this Declaration under

this Section will become effective only when recorded or at later date specified in the amendment.

## **ARTICLE X ANNEXATION**

During the Declarant Control Period, additional real property may be annexed to the Property by the Declarant without the consent of the Class A Owners. Such annexation will be accomplished by filing in the Office of the Clerk of the Superior Court, Athens-Clarke County an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration; or filing an amendment to the Declaration which has been consented to by the owners of the real property to be annexed if such real property is owned by someone other than Declarant. At the expiration of Declarant Control Period, no real property may be annexed to the Property unless such annexation is approved by a two-thirds vote of the Owners who are present in person or by proxy and voting at a meeting of Owners duly held in accordance with the provisions of the Bylaws of the Association.

## **ARTICLE XI MISCELLANEOUS**

1. **No Reverter.** No restriction in this Declaration is intended to be, or will be construed as, a condition subsequent or as creating a possibility of reverter.
2. **Severability.** A determination by a court that any provision of this Declaration is invalid for any reason will not affect the validity of any other provision.
3. **Headings.** The headings of the Articles and Section in this Declaration are for convenience only and will not affect the meaning or interpretation of the contents of this Declaration.
4. **Gender.** Throughout this Declaration, the masculine gender will be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.
5. **Notices.** All amendments, notices, requests, objection, waivers, rejections, agreements, approvals, disclosures, or consent of any kind made under this Declaration, whether made by the Declarant, the Association, the ACC, the Owners, or any other person, will be in writing. Any such writings will be sufficient only if deposited in the U.S. Mail, with sufficient postage, and sent to the following address:

A. Declarant: Keystone Custom Homes, LLC  
315 Oconee Street  
Athens, Georgia 30601

- B. Owners: Each Owner's address as registered with the Association in accordance with the Bylaws.

Any written communication transmitted by U.S. Mail will be deemed received on the third day following the day such written notice is deposited in the United States Mail. Additionally, each Owner will provide the Association with a valid email address for receipt of notices under this Declaration and will notify the Association of any changes to that address. Any delivery of a notice under this Declaration to the address provided by the Owners will be valid.

6. **No Liability.** Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner will have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. But in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant will have no liability of any kind as a result of such unenforceability, and each and every owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant will have so such liability.

7. **No Opt-in to GPOAA.** The Declarant does not subject the Association or any part of the Property to the Georgia Property Owners' Association Act ("GPOAA"). Notwithstanding any provision of this Declaration to the contrary, nothing in this Declaration will be construed as subjecting the Association or any part of the Property to the GPOAA.

8. **Insurance.**

- A. At all times during the term of this Declaration, the Association will keep any and all improvements located on the Common Property, including but not limited to stormwater facilities and detention ponds, fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvements in the event of loss or any or all of such improvements, fixtures and contents; and (ii) public liability insurance in such amounts as will be determined by the Board as appropriate for the type of activities which will be allowed on the Common Property. Any such policies of insurance will require that the certificate holders and insured by given thirty days prior written notice of any cancellation of such policies.
- B. Notwithstanding the preceding provision, the Board may at its discretion, require each Owner to name the Association as an additional insured party under each Owner's respective homeowners insurance policy. If the Board determines that this method of coverage is adequate, then this alternative method of coverage may be implemented in lieu of a policy or policies owned by the Association as described in the preceding paragraph.
- C. Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvements covered by insurance written in the name of the Association, the Board or its duly authorized agent will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost or repair

or reconstruction of the damaged or destroyed property. "Repair or reconstruction", as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed before the fire or other casualty. Any damage or destruction will be repaired or reconstructed unless, within sixty days after the casualty, at least seventy-five of the Owners entitled to vote on the matter, and during the Declarant Control Period, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid because of such damage or destruction, or both, are not made available to the Association within such period, then the period will be extended until such information will be made available; provided, however, such extension will not exceed one hundred and twenty days. No Mortgagee will have the right to participate in the determination of whether damage or destruction will be repaired or reconstructed. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board will, without the necessity of a vote of the Owners, levy a special assessment. Additional assessments may be made in like manner at any time during or after completing any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess will be deposited for the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction will not be repaired or reconstructed and no alternative improvements are authorized, then in that event the property will be restored to its natural state and maintained as an undeveloped portion of the Association in a neat and attractive condition.

- D. The deductible for any casualty insurance policy carried by the Association will, in the event of damage or destruction, be allocated among the persons who are responsible under this Declaration for maintenance of the damaged or destroyed property.
- E. In addition to the coverage described above, the Association will obtain such additional amounts and types of insurance as may be required from time to time, by either the Veterans Administration or Federation Housing Administration, their successors and assigns, for similar type residential subdivision communities.

## **ARTICLE XII MORTGAGEE PROVISIONS**

The following provisions are to benefit Mortgagees. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained in it.

1. **Notice of Action.** A Mortgagee who provides written request to the Association (such request to state the name and address of such holder, insurer, 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 Development 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 an Owner or a Lot subject to the mortgage of such eligible holder, where such delinquency has continued for sixty 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 any obligation under the Declaration or Bylaws of the Association which is not cured within sixty days;
- C. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- D. Any proposed action which would require the consent of a specified percentage of eligible mortgagees.

2. **No Priority.** No provision of this Declaration or the Bylaws gives or will be construed as giving any Owner or other party priority over any rights of any holder of a Mortgagee of any Lot in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

3. **Notice to Association.** Upon request, each Owner will be obligated to furnish to the Association with the name and address of the holder of any security deed (or similar security instrument) encumbering such Owner's Lot.

4. **Applicability of Article XII.** Nothing contained in this Article will be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Georgia law for any of the acts set out in this Article.

5. **Failure of Mortgagee to Respond.** Any mortgagee who receives a written request from the Board to respond to or consent to any action will be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty days of the date of the Association's request.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed the day and year first above written.

Signed, sealed, and delivered in the presence of:

**Keystone Custom Homes, LLC,  
A Georgia Limited Liability Company**

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
**Name:**  
**Title:**

(NOTARY SEAL)

